Supreme Court, U.S.
FILED
No. 05-1406 FEB 27 2006
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SHEILA DAVIS,

Petitioner,

v.

POLK COUNTY SHERIFF'S OFFICE,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Sheila Davis
Pro Se
929 Gilmore Ave. Apt. 80
Lakeland, FL 33801
(863) 738-2367

QUESTION PRESENTED

Whether Petitioner can satisfy the prerequisite of a timely filed charge.

LIST OF PARTIES

The Petitioner is Sheila Davis, a resident of Polk County, Florida. The Respondent is the Polk County Sheriff's office for Polk County.

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The district court opinion, Davis v. Polk County Sheriff is unpublished and is reprinted at App. 5. The Eleventh Circuit opinion, Davis v. Polk County Sheriff is unpublished and is reprinted at App. 1.

JURISDICTION

The United States Court Of Appeals decision denying the petitioner's petition for rehearing was entered on December 2, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The United States District Court Middle District Of Florida had jurisdiction pursuant to 42 U.S.C. § 2000 e-5.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the State of Florida, Article 1 § 2. Basic rights states: "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability."

STATEMENT OF THE CASE

Petitioner brings this cause of action against the Polk County Sheriff's Office. Polk County Sheriff's Office upholds a clever sham, creatively an insubordination scheme to use as a cover-up for terminating petitioner's employment. Due to the fact that petitioner reported incident of witnessing correctional officer Teddy Sanders brutalizing inmate James Gilliard on January 3, 1998, there was also racial prejudice and dominance involved against her. Nevertheless, also apart of Polk County Sheriff's Office's sham is they used a black man, Col. Willie Hall, who was promoted from major to be Polk County Sheriff's Office sole based representative to interact with Polk County Sheriff's Office attorney Michael D. Malfitano to obscure the fact that the Petitioner was being demeanored by all white people who generated memos reports.

Petitioner claims that due to many lengthy issues, and unaware at the time of being pro se, she was unable to prove protected status of race at the time of an administrative hearing with Administrative Law Judge Fred Buckine on February 20, 2002. Therefore, the request for Relief and Complaint of Discrimination was dismissed with prejudice on March 17, 2003, by Florida Commission on Human Relations. Petitioner also claims that on the Final Order Dismissing Petition From An Unlawful Employment Practice, she was given within 30 days of the date ordered (March 17, 2003) to appeal case to the Clerk Of Commission, or request the Equal Employment Opportunity Commission review the Commissions final agency action, by requesting it in writing within 15 days of her receipt of the order. Petitioner chose to request in writing a substantial weight review by EEOC.

Respondent forwarded a letter, dated April 1, 2003, to EOC to have petitioner's request declined. However, pursuant to Title VII of the Civil Rights Act of 1964, EEOC issued a Notice of Suit Rights to petitioner, dated November 25, 2003. Petitioner filed suit within 90 days of the notice to the U.S. Middle District Court in Tampa, FL. Petitioner contends she amended her complaint to racial discrimination and Judge Elizabeth Kovachevich dismissed case with prejudice, after stating in her order dated August 6, 2004, that the court finds Plaintiff's charge was not timely. Petitioner filed a Notice Of Appeal to The United States Court Of Appeals in Atlanta, GA, pursuant to 28 U.S.C. § 1292, who granted petitioner's motion to reinstate appeal, dated July 19, 2005. *Ferdik v. Bonzelet* C.A., 1992 963 F.2d 1258. Respondent submitted untimely brief to U.S. Court Of Appeals and contends that petitioner's charge was untimely. Nevertheless, the U.S. Court Of Appeals decision, dated October 31, 2005, states that petitioner cannot satisfy the prerequisite of a timely filed charge.

Petitioner filed a Petition For Rehearing, mailed November 9, 2005 along with the opinion of the 11th circuit, also with enclosures (11) which includes copies of evidence of EEOC's Notice of Suit Rights, Findings from the state or local agency who investigated the case, Respondent's letter to EEOC requesting to have petitioner's request for substantial weight review declined, docket sheet from U.S. Middle District Court in Tampa, FL, draft of step-by-step guide from district court in Tampa, FL to demonstrate to courts and parties that petitioner admits to typo of amended complaint, concerning whom she filed charges with and date(s).

Petitioner received an order from U.S. Court Of Appeals dated December 2, 2005, denying her Petition For Rehearing.

REASONS WHY THE WRIT SHOULD BE GRANTED

Pursuant to Supreme Court Rule 10(c), "The United States Court Of Appeals has decided an important question of federal law that hasn't been but needs to be settled by this court," petitioner states the Court should grant the petition for writ of certiorari. The United States Court Of Appeal may be erroneous by deciding that petitioner cannot satisfy the prerequisite of a timely filed charge. Petitioner provided her Petition For Rehearing, along with evidence of the findings of the local agency who investigated the case, to the United States Court Of Appeals. Satisfactory proof was also provided showing that the case and decided to provide petitioner with a Notice of Suit Rights. EEOC's Notice of Suit Rights does not state that petitioner was untimely. The national importance of having the United States Supreme Court decide the question involved is the fact that the Court will clarify to the general public, as well as to the lower courts as well that a modification needs to be made showing that petitioner's claim is not untimely. Nevertheless, the case is of great importance to petitioner for she deserves relief, pursuant to Title VII of the Civil Rights Act of 1964. Also, the case is important to others with a similar situation so we as a people can have a fair chance at civil rights and be courageous in pursuing justice to the highest court(s) for relief.

CONCLUSION

Although petitioner may experience the harm from an unlawful employment practice, she was not always aware of the strategy involved in pursuing litigation. Considering the fact that petitioner has acted upon case in a timely manner

since year 1998, pursuant to federal and state laws, she should be granted an allowance beyond that of legal counsel. For these reasons, the Petitioner respectfully requests the Court to grant certiorari.

Sheila Davis, Pro Se
929 Gilmore Ave. Apt. 80
Lakeland, FL 33801
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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-10581
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
October 31, 2005
THOMAS K. KAHN
CLERK

D.C. Docket No. 04-00177-CV-T-17-TBM

SHEILA OLIVIA DAVIS,

Plaintiff-Appellant,

versus

POLK COUNTY SHERIFF'S OFFICE,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(October 31, 2005)

Before DUBINA, BLACK and HULL, Circuit Judges.

PER CURIAM:

Sheila Olivia Davis, proceeding *pro se*, appeals the district court's dismissal of her amended complaint alleging discrimination and retaliation based on her race pursuant to Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e-3(a). The district court dismissed Davis's amended complaint *sua sponte* after determining Davis's claim was untimely because her EEOC charge was not filed within 300 days of the last discriminatory act, and was therefore frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).[1] Davis asserts the district court abused its discretion when it dismissed her claim because her case was not untimely. She also seeks recusal of the district judge upon remand. We affirm the district court.

We review the dismissal "of an *in forma pauperis* action as frivolous under § 1915(e)(2)(B)(i) for abuse of discretion." *Mitchell v. Brown & Williamson Tobacco Corp.*, 294F.3d 1309, 315 (11thCir. 2002). An action "is frivolous if it is without arguable merit either in law or fact." *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

As an initial matter, the Polk County Sheriff's Office (Sheriff's Office) Contends Davis's appeal is untimely. A notice of appeal in a civil case must be filed "within 30 days after the judgment or order appealed from is entered." Fed. R. App. P. 4(a)(1)(A). If a separate document is required by Federal Rule Of Civil

Procedure 58(a)(1), then the order is not entered until either the "judgment or order is set forth on a separate document" or 150 days have passed since the judgment or order was entered in the civil docket. Fed. R. App. P. 4(a)(7)(A)(ii).

The district court's order of dismissal with prejudice Pursuant to 28 U.S.C.§ 1915(e)(2)(B) required a separate

document. Since the order was entered on the docket on August 6, 2004, but not set forth on a separate document, it was not entered for the purposes of filing

[1]Davis also filed a motion to proceed in *forma pauperis* in the district court.

a notice of appeal until January 3, 2005. Davis's notice of appeal, filed either on January 27 or January 28, 2005, is therefore timely to appeal the district court's order of dismissal.

Davis's notice of appeal does not designate any order being appealed as required by Fed. R. App. P. 3(c)(1)(B). Because the requirements of Rule 3 are jurisdictional, *Smith v. Barry,* 112 S. Ct. 678, 682 (1992), we are obligated to review *sua sponte* whether Davis complied with Fed. R. App. P. 3(c)(1)(B). *See Finn v. Prudential-Bache Sec., Inc.,* 821 F. 2d 581, 584-85 (11th Cir. 1987). A notice of appeal must "designate the judgment, order, or part thereof being appealed." Fed. R. App. P. 3(c)(1)(B). Failure to abide by this requirement generally precludes us from reviewing any judgment or order not so specified. *McDougald v. Jenson,* 786 F.2d 1465, 1474 (11th Cir. 1986). However, we liberally construe this requirement "in favor of the appellant where the intent to appeal an unmentioned or mislabeled ruling is apparent
and there is no prejudice to the adverse party." *Campbell v. Wainwright,* 726 F.2d 702, 704 (11th Cir. 1984).

Davis's notice of appeal reads, "Plaintiff is filing a NOTICE OF APPEAL to the UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT, ATLANTA GEORGIA." Davis's brief challenges the district court's finding that her charge was untimely. The Sheriff's Office's

brief addresses the district court's order of dismissal, contesting the appeal's timeliness as well as briefing the merits of the issue. Davis evidenced an intent to appeal the dismissal of her amended complaint and the Sheriff's Office has not been prejudiced. Therefore, we have jurisdiction over Davis's appeal of the order dismissing her amended complaint.

A prerequisite to bringing suit under Title VII is the timely filing of a charge of discrimination. *Maynard v. Pneumatic Prods. Corp.*, 256 F.3d 1259, 1262 (11th Cir. 2001). 42 U.S.C. § 2005e-5(e)(1) sets out the amount of time a claimant has to file a charge with the EEOC.

A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred . . .except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier. . . .2005e-5(e)(1). Since Florida is a deferral state,[2] a charge must be filed within 300 days of the last discriminatory act. *E.E.O.C. v. Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 11271 (11th Cir. 2002).

Davis alleged the most recent acts of discrimination occurred on or about May 1998, but she did not file charges with the EEOC until May or June 2003. Assuming Davis

filed timely charges with the administrative agency, making the longer 300 day period applicable to her case, Davis cannot satisfy the prerequisite of a timely filed charge. Since the district court did not err in concluding that Davis's EEOC charge was untimely, it did not abuse its discretion in dismissing her amended complaint. Because we affirm the district court, we do not reach the issue of whether the district court judge should be recused.

AFFIRMED.

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[2]Deferral states "prohibit the unlawful employment practice at issue and have established state or local authorities to grant or seek relief for such practice." *Maynard,* 256 F.3d at 1262-63.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SHEILA OLIVIA DAVIS,
Plaintiff(s),

v. CASE NO. 8:04-CV-177-T-17TBM

POLK COUNTY SHERIFF'S OFFICE,

Defendant (s) .

_____/

ORDER

This cause is before the Court on:
Dkt. 9 Amended Complaint

In the prior Order (Dkt. 4) dismissing this case without prejudice, the Court directed Plaintiff to file an amended complaint, and directed Plaintiff to state what the findings of the local agency investigating the charge were. The EEOC Notice of Right to Sue states the its case was closed based on those findings. There is a pending motion to proceed IFP, and the Court is required to evaluate whether this case has any possibility of success in deciding that motion. The Court must ascertain that the case is not filed for a frivolous or malicious purpose.

In Plaintiff's Amended Complaint, the only time frame stated for the occurrence of discriminatory acts is January – May, 1998. Plaintiff filed her EEOC charge in May or June, The Court previously directed Plaintiff to notify the Court of

the findings of the local agency which investigated Plaintiff's claim, but Plaintiff has not done so.

Case No. 8:04-CV-177-T-17TBM

Timely filing of a charge of discrimination is a Prerequisite to bringing suit under Title VII. Florida is a "deferral" state, in that Florida has a state agency, the Florida Commission on Human Relations, to investigate claims. The "look-back" period for filing a timely charge with the EEOC is 300 days, if the complainant first files a timely charge in a state or local agency.

Since the only discriminatory acts stated in the Complaint took place in 1998, and EEOC charge was not filed until May or June, 2003, the Court finds Plaintiff's charge was not timely, and therefore this case has no possibility of success.

Accordingly, it is

ORDERED that the Amended Complaint is **dismissed with Prejudice**, and the Clerk of Court shall close this case.

DONE and ORDERED in Chambers, in Tampa, Florida on this 6th day of August, 2004.

s/ Elizabeth A. Kovachevich
Elizabeth A. Kovachevich
UNITED STATES DISTRICT JUDGE

Copies to: All parties and counsel of record

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

No. 05-10581-FF DEC 0 2 2005

SHEILA OLIVIA DAVIS,

Plaintiff-Appellant,

Versus

POLK COUNTY SHERIFF'S OFFICE,

Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Florida

---

BEFORE: DUBINA, BLACK AND HULL, Circuit Judges.

PER CURIAM:

The petition (s) for rehearing filed by Appellant Sheila Olivia Davis is DENIED.

ENTERED FOR THE COURT:

s/ Susan H Black
UNITED STATES CIRCUIT JUDGE ORD-41

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

SHEILA DAVIS — EEOC Case No. 15D995983

Petitioner, — FCHR Case No. 99-0192

v. — DOAH Case No. 01-3466

POLK COUNTY SHERIFF'S OFFICE

Respondent. — FCHR Order No. 03-017

_____/

FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

On October 7, 1998, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice based on her marital status. The allegations set forth in the complaint were investigated and on July 20, 2001, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief and was granted a formal evidentiary hearing that was held in Lakeland, Florida, on February 20 and 21, 2002, before Administrative Law Judge Fred L. Buckine.

Judge Buckine issued a Recommended Order of Dismissal dated September 16, 2002.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

Judge Buckine found that Petitioner was employed by the Polk County Sheriff's Office primarily as a Booking Clerk from 1994 until her termination on May 29, 1998. The Petitioner was married to Curtis C. Young in 1997, in Pasco County, and subsequently divorced him at some point in time prior to April, 1998. In December, 1997, the Sheriff initiated an administrative investigation into allegations that Petitioner was passing confidential information about inmates to her then husband, Young. This investigation continued through April, 1998.

On January 3, 1998, while on duty the Petitioner observed and reported an incident of an officer allegedly beating a handcuffed inmate. Later, her supervisor was made aware of the report and made jokes about her use of the slang term "Jacked Up" in her report. The following morning, January 4, Petitioner was working at the Booking Area information desk. During her tour of duty, she got
into an argument with a civilian. After a discussion between Petitioner and her supervisor, she was relieved of duty in the Booking Area and reassigned to duty in the Control Tower. As the exchange between the two became "tense," she was also reported as being "insubordinate," relieved of duty and sent home for the remainder of the night shift. The

above incident was reported to the Lieutenant (Officer in Charge) who instructed her supervisor to suspend her for the

remainder of the January 4th tour of duty. Upon informing the Petitioner of her suspension, another argument ensued between her and her supervisor. On January 5, 1998. Based on the report by her supervisor and with the concurrence of the Lieutenant, the Petitioner was charged with violating Sheriff's General Orders relating to Respect toward Supervisors; Abusiveness; and Compliance and Execution of Lawful Orders.

Petitioner also, at some time prior to January, 1998, began to participate in the Polk County Crime Stoppers, a program for civilians to report known and suspected criminals and criminal activities. The program often provided monetary rewards. Petitioner became aware that her ex-husband, Young, may have been incarcerated in the Pinellas County Jail under an alias. Sometime during April, 1998, Petitioner contacted the Pinellas County Sheriff's Office that she may have some information about one of their inmates (as part of Crime Stoppers).

Upon becoming aware that she was an employee of the Polk County Sheriff's Office, the Pinellas Lieutenant advised Petitioner to work through her office and not directly contact Pinellas Sheriff's Office in the future. He also informed the Polk Sheriff's Office and Lt. Blackwelder, of the Polk Administrative Investigations Department, initiated a joint effort. Lt. Blackwelder instructed the Petitioner to cease calling the Pinellas County Sheriff's Office regarding Young. At this meeting an argument ensued. Subsequent to this meeting, Petitioner contacted the Pinellas County Sheriff's Office regarding Young for the intended Purpose of collecting a Crime Stoppers award. She was then alleged to have violated Sheriff's General Orders relating to Compliance and Execution of Lawful Orders and Respect

towards Supervisors. She was suspended with pay for these violations on or about April 22, 1998.

In May, 1998, a pre-disciplinary hearing was held and all charges were sustained resulting in the termination of her employment. The ALJ found that her termination came about because of her repeatedly argumentative and insubordinate behavior towards her supervisors and superiors. See, ¶ 26 and 28, Recommended Order. A review of the transcript and exhibits clearly indicate competent and substantial evidence supporting these findings.

We adopt the Administrative Law Judge's findings of Fact.

Conclusions of Law

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination."
See conclusions of law adopted by a Commission panel in Spratlin vs. Washington Mutual Bank d/b/a Great Western. 23 F.A.L.R 3359, AT 3364, 3365 (FCHR 2001), citations from the quoted statement omitted

The Administrative Law Judge concluded that the Petitioner failed to establish, by a preponderance of the evidence, a prima facie case of discrimination by the Respondent. See, ¶ 29, Recommended Order. He Specifically found that there was no casual connection

between her membership in a protected group and the adverse employment action (termination) that was

FCHR Order No. 03-017
Page No. 4

Inferences drawn by the Administrative Law Judge in his findings and conclusions. She also introduces evidence or inferences that were never presented in the evidentiary hearing.
Specifically, the Petitioner states:

Exception #1 (first two paragraphs of letter) consists of complaints about the failure of the Commission's clerk to transmit "all of my [Petitioner's] original complaint," and the fact that Petitioner also requested case to be based on Whistleblower's Protection. The DOAH hearing is "de novo" based upon the Petitioner's Petition for Relief. All matters must be pled and supported before the ALJ.

Also, there is nothing in the file that reflects the Petitioner's alleged request to base her case on Whistleblower's Protection and, even if there was, the Commission has no authority over local government whistleblowers, that authority is vested in the Circuit Courts of the state. The Commission rejects Petitioner's exception #1.

Exceptions #2 and 15-19, inclusive, relate to alleged activities by the Respondent and its officers, as well as suggested further actions that Petitioner believes the Commission should take, and is beyond the scope of this proceeding and unsupported by any evidence in the record. The commission rejects Petitioner's exceptions #2 and 15-19.

Exceptions #3-5 and 8-11, inclusive, restate and reargue facts before the ALJ and do not show that the ALJ''s findings

and conclusions were not supported by the evidence in the case. The commission rejects Petitioner's exceptions #3-5 and 8-11.

Exceptions #6-7 and 14 raise issues and present arguments that were not presented at the evidentiary hearing and are beyond the record in the case. The Commission rejects Petitioner's exceptions #6-7 and 14.

Exceptions #12 and 13 raise an issue of Petitioner's state of mind, and a possible disability, that was not included in her initial complaint or Petition for Relief, and was not investigated by either the Commission or the ALJ. These exceptions are beyond the scope of the issue presented. The Commission rejects Petitioner's exceptions #12 and 13.

Based on the foregoing, the Petitioner's exceptions are not accepted.

Dismissal

The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure, Rule 9.110.

DONE AND ORDERED THIS 17TH day of March, 2003.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

s/ Rita Barreto Craig

Commissioner Rita Barreto Craig Chairperson and
Commissioners Gayle Cannon and P.C. Wu

FCHR Order No. 03-017
Page No. 5

Filed this 17th day of s/ March, 2003
In Tallahassee, Florida.

s/ Violet Crawford
Violet Crawford, Clerk

Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(850) 488-7082

NOTICE TO COMPLAINANT/PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request the EEOC review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131

Copies furnished to:
Sheila Davis
2458 Chestnut Woods Drive
Lakeland, FL 33815

Michael D. Malfitano, Esquire
David P. Steffen, Esquire
100 West Kennedy Blvd., Suite 500
PO Box 1840
Tampa, Florida 33601-1840

David S. Bergdoll, Esquire
433 North Broadway
Bartow, FL 33830

Fred L. Buckine, Administrative Law Judge (DOAH)
Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addresses this 17th day of s/ March, 2003.

BY: s/ Violet Crawford
Clerk of Commission

CONSTANGY, BROOKS & SMITH, LLC
ATTORNEYS AT LAW
SUITE 500
100 WEST KENNEDY BOULEVARD
P.O. BOX 1840
TAMPA, FLORIDA 33601-1840
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April 1, 2003

Federico Costales
Miami District Office of the EEOC
One Biscayne Tower
2 South Biscayne Blvd., Suite 2700
Miami, FL 33131

Re.: *Sheila Davis and Polk County Sheriff's Office,*
FCHR Case No.: 99-0192
EEOC Case No.: 15D995983

Dear Mr. Costales:

This letter is in response to the request forwarded by Petitioner, Ms. Sheila Davis, regarding her Charge filed with the Florida Commission on Human Relations. On March 30, 2003, Ms. Davis requested that your office conduct a "substantial weight review" of the Florida Commission's Final Agency Action. Based upon a conversation I had with your office, it is our understanding that you do not have any record of her dual filing her charge.

Even if the EEOC received a charge regarding this matter, we believe the request should be dined.

On October 7, 1998, Petitioner filed a Complaint alleging marital status discrimination and pursuant to the Florida Civil Rights Act of 1992, § 760.01-760.11, Fla. Stat. (2001). In addition, Petitioner also alleged retaliation based upon her reporting the alleged abuse of an inmate. After an investigation, the Executive Director issued a decision dismissing her Complaint. The Petitioner filed a Petition For Relief and an evidentiary hearing was held before Administrative Law Judge Fred L. Buckine on February 20, 2002. Judge Buckine issued a Recommended Order of Dismissal on September 16, 2002, which was affirmed by the Florida Commission on March 17, 2003. Therefore, the EEOC does not have jurisdiction to review this matter pursuant to its substantial weight procedures. Petitioner's appellate rights are under Florida Statutes and not the EEOC's review procedures. Consequently, we request that the EEOC decline Petitioner's request.

Sincerely

CONSTANGY, BROOKS & SMITH, LLC

s/ David Steffen
DAVID P. STEFFEN

DPS/dm

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Sheila Davis**
2458 Chestnut Woods Drive
Lakeland, Florida 33815

From: **Miami District Office**
One Biscayne Tower
2 South Biscayne Blvd., Ste. 2700
Miami, Florida 33131

On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601 7(A))

EEOC Charge No.	**EEOC Representative**	**Telephone No.**
15D-1999-05983	**James Colon, State & Local**	**(305)536-4454**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

The facts alleged in the charge fail to state a claim under any of the statutes enforced by EEOC.

Your allegations did not involve a disability as defined by the Americans with Disabilities Act.

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

While reasonable efforts were made to locate you, we were not able to do so.

You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

X The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

Other (briefly state)

-NOTICE OF SUIT RIGHTS-
(See the additional information attached to this form.)

Title VII, the Amerians with Disabilities Act, and/or the Age Discrimination in Employment At: This will be the

only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA **suits must be filed in federal** or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

NOV 25 2003

Enclosure(s) s/ Hollis Larkins
Federico Costales,
District Director

(Date Mailed)

cc: **Polk County Sheriff's Office**
c/o Michael D. Malfitano, Esp.
100 W. Kennedy Boulevard,
Ste. 500
Post Office Box 1840
Tampa, Florida 33601-1840

David S. Bergdoll, Esq.
455 North Broadway
Bartow, Florida 33830

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act(ADA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice.**
Therefore, you should **keep a record of this date.** Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a

timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough.

You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment record are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS – Equal Pay Act (EPA):

EPA Suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible.
For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit before 7/1/02 – not 12/1/02 – in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2-or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION – Title VII and The ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE – All Statutes:

You may contact the EEOC representative shown on your notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice.** (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

Electronic Case Filing U.S. District Court-Middle District of Florida-Docket Report

APPEAL, TBM

U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:04-cv-00177-EAK-TBM

Davis v. Polk County Sheriff
Assigned to: Judge Elizabeth A. Kovachevich
Referred to: Magistrate Judge Thomas B. McCoun, III
Demand: $0
Cause: 42: 2000 Job Discrimination (Sex)

Date Filed: 01/30/2004
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs

Jurisdiction: Federal Question

Plaintiff

Sheila Olivia Davis represented by: **Sheila Olivia Davis**
929 Gilmore Ave., Apt.80
Lakeland, FL 33801
PRO SE

V.

Defendant

Polk County Sheriff's Office

Date Filed	#	Docket Text
01/30/2004	1	COMPLAINT filed; jury demand (jlh) (entered: 01/30/2004)
01/30/2004		MAGISTRATE JUDGE CASE ASSIGNMENT Magistrate assigned: Thomas B. McCoun III (jlh) (Entered: 01/30/2004)
01/30/2004	2	MOTION by Sheila Olivia Davis to proceed in forma pauperis (affidavit of indigency) (jlh) (Entered: 01/30/2004)
02/04/2004	3	NOTICE of designation under Local Rule 3.05-TRACK 2. (ctc) (jlh) (Entered: 02/05/2004)
02/17/2004	4	ORDER that complaint is dismissed without prejudice; Plaintiff shall file an an amended complaint within 30 days. reset amended complaint deadline at 3/17/04 for Sheila Olivia Davis deferring [2-1] motion to proceed in forma pauperis (affidavit of indigency) (Signed by Judge Elizabeth A. Kovachevich) ctc (jlh) (Entered: 02/18/2004)
02/27/2004	5	NOTICE by Sheila Olivia Davis of change of address for pro se (ch) (Entered: 5/18/2004)

07/16/2004	6	ORDER re 4 Order, No amended

		complaint has been filed. Plaintiff shall show cause within ten days why this case should not be dismissed for failure to prosecute. Signed by Judge Elizabeth A. Kovachevich on 7/16/2004. (jm,) (Entered: 07/16/2004)
07/23/2004	7	RESPONSE TO ORDER TO SHOW CAUSE 6 by Sheila Olivia Davis. (jlh,) (Entered: 07/23/2004)
07/26/2004	8	ORDER re 7 Response to Order to Show Cause filed by Sheila Olivia Davis. Plaintiff shall file an amended complaint within ten days. If no amended complaint is filed, this case will be dismissed. Signed by Judge Elizabeth A. Kovachevich on 7/26/2004. (jm,) (Entered: 07/26/2004).
08/05/2004	9	AMENDED COMPLAINT against Polk County Sheriff's Office, filed by Sheila Olivia Davis. Related document: 1 Complaint. (jlh) (Entered: 08/05/2004)
08/06/2004	10	ORDER re 9 Amended Complaint filed by Sheila Olivia Davis, dismissing Amended Complaint with prejudice. The Clerk of Court shall close this case and terminate all pending motions. Signed by Judge Elizabeth A. Kovachevich on 8/6/2004. (jm,) (Entered: 08/06/2004)
09/22/2004	11	MOTION (letter) for status of case requesting directions. by Sheila Olivia Davis. (jlh) (Entered: 09/23/2004)
09/24/2004	12	ENDORSED ORDER re 11 MOTION for status of case requesting directions. filed by Sheila Olivia Davis, notifying Plaintiff that this case was dismissed

		with prejudice (Dkt.10). Signed by Judge Elizabeth A. Kovachevich on 09/24/2004. (jm,) (Entered: 09/24/2004)
12/27/2004	13	MOTION for reconsideration due to court's error to inform plaintiff of her right to appeal by Sheila Olivia Davis. (jlh,) (Entered: 12/27/2004)
12/28/2004	14	ORDER denying 13 Motion for reconsideration. Signed by Judge Elizabeth A. Kovachevich on 12/28/2004. (jm,) (Entered: 12/28/2004)
01/27/2005	15	NOTICE OF APPEAL as to 14 Order on motion for reconsideration by Sheila Olivia Davis. Filing fee not paid (crs) (Entered: 01/31/2005)
01/28/2005	16	MOTION for Leave to Appeal in forma pauperis by Sheila Olivia Davis. (crs) (Entered: 01/31/2005)
01/28/2005	17	TRANSMITTAL of initial appeal package to USCA consisting of certified copies of notice of appeal, docket sheet, order/judgment being appealed re: 15 Notice of appeal. Transcript information form sent. There were no hearings from which a transcript could be made. (crs) Entered: 01/31/2005)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

_____
(Enter your full name)

Plaintiff(s) Case No._____

v.

_____
(Enter full name of Defendant)

Defendant(s)

COMPLAINT

1. First Paragragh (Name and Address of Plaintiff)
2. Second Paragragh (Name and Address of Defendant)
3. This employment discrimination action is brought Pursuant to Title VII of the Civil Rights Act of 1964, as amended. Jurisdiction is specifically conferred on this court by 42U.S.C 2000e-5. Equitable and other relief is sought under 42 U.S.C 2000e5(g). **NOTE: IF YOUR ACTION IS NOT BASED ON THIS STATUTE, PLEASE CITE THE APPROPRIATE BASIS FOR YOUR ACTION. BE SURE TO MAKE OTHER NECESSARY CHANGES THROUGHOUT YOUR COMPLAINT.**
4. The acts complained of in this suit concern:
   a. Failure to employ me.
   b. Termination of my employment.
   c. Failure to promote me.
   d. Other acts as specified.

ATTACHMENT 3

5. Defendant's conduct is discriminatory with respect to the following:
   a. My race or color.
   b. My religion.
   c. My national origin.
   d. My sex.
   e. Other as specified.

NOTE: CIVIL RIGHTS ACTION CAN ALSO BE BASED ON OTHER DISCRIMINATORY PRACTICES.
IF YOUR COMPLAINT ALLEGES ANOTHER BASIS
OF DISCRIMINATION, STATE THAT BASIS AND THE APPROPRIATE STATUTE THROUGHOUT YOUR COMPLAINT.

6. The facts surrounding my claim of employment Discrimination.
7. The alleged discrimination occurred on or about (dates).
8. I filed charges with the Equal Employment Opportunity
   Commission regarding Defendant's alleged discriminatory conduct on or about (dates).
9. The Equal Employment Opportunity Commission issued a ***Notice of Right To Sue*** letter (copy attached) which was received by me on or about (dates).
10. My reasons for questioning the Commission's determination.
11. If relief is not granted, I will be irreparably denied rights secured by Title VII of the Civil Rights Act of 1964, as amended. **Note: IF THIS IS NOT THE**

STATUTORY BASIS FOR YOUR ACTION, CITE
THE APPROPRIATE STATUTE.

12. **WHEREFORE,** Plaintiff prays that:
    a. The Court appoint legal counsel pursuant to 42 U.S.C 2000e-f(f)(1)(3). **NOTE: IF THIS IS NOT THE STATUTORY BASIS FOR YOUR ACTION, CITE THE APPROPRIATE STATUTE.**
    b. The Court grant such relief as may be appropriate,
    including injunctive orders, damages, costs, and attorney's fees.

Signature
Name (Typed or Printed)
Address
Telephone No.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO: 05-10581-FF

SHEILA O. DAVIS

Appellant,

v.

POLK COUNTY SHERIFF'S OFFICE

Appellees.

PETITION FOR REHEARING

Appellant/Plaintiff files for petition for rehearing, in reference of court's opinion, pursuant to Federal Rules Of Appellate Procedure 40. Appellant contends that she is able to satisfy or prove the prerequisite of a timely filed charge, by enclosing the necessary documentation along with her petition for rehearing. Appellant encloses a copy of the Notice Of Suit Rights from EEOC, dated November 25, 2003, received by appellant on December 1, 2003, that doesn't state that she was untimely.

Appellant, also, encloses a copy of the findings of the local agency (Florida Commission On Human Relations) who investigated the charge. (For the record, please view page numbers of the findings of the local agency. After the first page, the top of each page reads: Page No. 2, Page No.

4, and Page No. 5. This was a typographical error on behalf of FCHR and not an exclusion of Page No. 3 on behalf of appellant.

Nevertheless, due to unawares of being pro se and trying to understand district court's attachment 3 inside of step-by-step guide, and also trying to submit documentation in a timely manner, appellant admits and apologizes for typed error(s) of amended complaint concerning who she filed charge with and the date(s). Please view copy of attachment 3 enclosed. Appellant contends that she was verbally referred by EEOC to FCHR whom she filed charge with on October 7, 1998. Appellant states that because FCHR was not in her favor, instead of requesting an appeal within thirty days back through FCHR, she decided to request a substantial weight review within 15 days through EEOC in March 2003. Also, appellees tried to get appellant's request declined. Documentation from appellee to EEOC is enclosed, for appellant was received a copy.

However, the matter should not be overlooked, due to the fact that appellant's charge was not untimely. Appellant states that Appellees brief contends that the district court's February 17, 2004 order instructed her to file, within thirty days, an amended complaint that included a statement regarding the findings of the local agency investigating the charge of discrimination. (Doc 4 p.2). However, in viewing the district court's docket sheet, (copy of district court's docket sheet is enclosed) under date filed for February 27, 2004 it reads: ORDER dated 2/17/04 addressed to Sheila Davis returned – attempted, not known (jlh)(Entered: 03/01/2004). Appellant contends that she couldn't respond to an order that she never received. This is not the appellant's

fault. Appellant contends that from April 2001, until April 1, 2004, she was at her previous address of: 2458 Chestnut Woods Drive., Lakeland, FL 33815. Therefore, appellant states that she would have received the district court's order and responded as soon as possible, had there had been an order mailed to her. Appellant states that her conclusion is that the district claims to have mailed order (Doc 4 or Dkt. 4) but never did or either the mailman may have incorrectly delivered to another address and someone at the other address may have marked unknown and returned to sender who will be the

district court. Appellant contends that she didn't move to her current address of: 929 Gilmore Ave. Apt. 80 Lakeland, FL 33801, until April 1, 2004 with an address notification requesting the post office to forward all of her mail to her above current address. Once Appellant became established, she directly notified the district court of her above current address, also. Appellant states that after she filed complaint and affidavit of indigency with district court on January 30, 2004, the first order she received from the district court was dated July 16, 2004 for order to show why case shouldn't be dismissed for failure to prosecute, in reference of Dkt. 4, that appellant/plaintiff never received. Also, in viewing the district court docket sheet under date filed February 17, 2004 – ORDER that complaint is dismissed without prejudice; It only states that Plaintiff shall file an amended complaint within 30 days, and not that plaintiff should also send in the findings of the local agency that investigated her charge. Appellant/Plaintiff contends that she filed a timely charge, and encloses satisfactory proof. Nevertheless, appellant petitions to be reheard and requests that petition is granted. November 9, 2005

Enclosures 11

Respectfully Submitted,

s/ Ms. Sheila O. Davis
Ms. Sheila O. Davis, Pro Se
929 Gilmore Ave. Apt. 80
Lakeland, FL 33801
(863) 738-2367

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO: 05-10581-FF

SHEILA O. DAVIS

Appellant,

v.

POLK COUNTY SHERIFF'S OFFICE

Appellees.

CERTIFICATE OF SERVICE

I, Sheila O. Davis, hereby certify that a true and correct copy of the foregoing Petition For Rehearing, enclosures (11), along with the opinion of the 11th circuit has been sent by U.S. mail to the party above c/o party below on this 9th day of November, 2005.

Polk County Sheriff's Office
c/o Michael D. Malfitano, Esq.
Constangy, Brooks & Smith, LLC
100 West Kennedy Boulevard, Suite 500
P.O. Box 1840
Tampa, FL 33601-1840
(813) 223-7166

s/ Sheila O. Davis
Sheila O. Davis

(2)

No. 05-1406

Supreme Court, U.S.
FILED
JUN 5 - 2006
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

SHEILA DAVIS,

Petitioner,

v.

POLK COUNTY SHERIFF'S OFFICE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

R. CARL CANNON
CONSTANGY, BROOKS & SMITH, LLC
230 Peachtree Street, N.W.
Suite 2400
Atlanta, Georgia 30303-1557
(404) 525-8622

Attorneys for Respondent

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COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Should the Court grant certiorari to review the Eleventh Circuit's holding that the district court's *sua sponte* dismissal of Davis's Amended Complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), was not an abuse of discretion, because Davis failed to meet a prerequisite to maintain her claim?

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Rules of Court:

Sup. Ct. R. 10 ..... 4, 11, 17

STATUTORY PROVISIONS

1. The case at issue involves a *sua sponte* dismissal of an *in forma pauperis* complaint in the court below pursuant to Title 28, Section 1915(e)(2)(B)(i). Title 28, Section 1915(e), of the United States Code provides:

> (1) The court may request an attorney to represent any person unable to afford counsel.
>
> (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that —
>
> (A) the allegation of poverty is untrue; or
>
> (B) the action or appeal—
>
> (i) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e).

2. The court below held that the case had "no possibility of success," thus finding that the action was frivolous. The holding was based upon a failure to satisfy a prerequisite to suit. Said prerequisite to pursuing Petitioner's claims is

located within Title 42, Section 2000(e)-5(e)(1) of the United States Code, which states that:

> **(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system**
>
> **(1)** A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

42 U.S.C. § 2000e–5(e)(1).

To the honorable Justices of the Supreme Court of the United States:

Respondent, Polk County Sheriff's Office ("PCSO"), for the reasons set forth below, respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

INTRODUCTION

PCSO opposes the Petition of Sheila Davis ("Davis") for Writ of Certiorari to review the decision of the Eleventh Circuit Court of Appeals because that decision merely applies existing law. In this case, the Eleventh Circuit affirmed the district court's dismissal of Davis's Amended Complaint, filed *in forma pauperis*, because she failed to establish a prerequisite to maintaining her suit under Title VII of the Civil Rights Act. In particular, Davis, after being given the opportunity to amend the deficiencies in her initial Complaint, pled facts evidencing her failure to timely file a charge of discrimination. Therefore, the Eleventh Circuit affirmed the dismissal based upon this failure. The Eleventh Circuit's ruling was consistent with this Court's prior opinions construing Title VII. Furthermore, the other courts of appeals that have addressed the dismissal of *in forma pauperis* complaints which pled facts that established affirmative defenses have also upheld the dismissal of such complaints as frivolous. Consequently, the Court should deny Davis's Petition because the Eleventh Circuit's decision is consistent with this Court's prior opinions and the decision

of every other federal court that has addressed the issue. The Petition simply does not present an issue compelling review by the Court.

Davis failed to establish that she met the prerequisites to maintaining a claim under Title VII of the Civil Rights Act because the facts in her Amended Complaint demonstrated that she did not timely file a charge of discrimination before alleging race discrimination in her suit.[1] Consequently, the Eleventh Circuit properly affirmed the district court's dismissal of Davis's Amended Complaint because it was frivolous.

The facts in the record are undisputed, and present no compelling basis for review by the Court.[2] Furthermore, the issues do not involve any "important question of federal law" in a way that "conflicts with relevant decisions of this Court" or of the courts of appeals.[3] The issues of law presented are neither novel nor complex, and the decision of the Eleventh

---

1. *See* Petition App. 6. (Davis did not attach her Complaint or Amended Complaint to her Petition. Therefore, PCSO cites to the district court's Order dismissing her Amended Complaint with Prejudice).

2. PCSO was never served with either the Complaint or Amended Complaint. Consequently, it did not file an answer and defenses to the allegations contained within Davis's pleadings and there was no factual record outside of the allegations in Davis's Amended Complaint. Therefore, the only facts are those cited by the district court in its dismissal.

3. *See* Sup. Ct. R. 10.

Circuit is entirely consistent with the reasoning and analysis developed in similar cases decided by other courts of appeals. Therefore, the Petition should be denied.

COUNTERSTATEMENT OF THE CASE

A. District Courts Are Given the Discretion to Dismiss a Complaint Filed *In Forma Pauperis* If the Complaint is Frivolous.

Complaints filed *in forma pauperis* are subject to *sua sponte* dismissal if based upon an indisputably meritless legal theory.[4] The statutory authority granted to district courts is designed largely to discourage filing of, and prevent the waste of judicial and private resources upon, baseless suits that paying litigants generally do not file because of the cost of bringing suit and the threat of Rule 11 sanctions.[5] Rather than provide a definitive answer as to what qualifies as a frivolous complaint, this Court has left the decision up to district courts to determine what claims lack legal merit.[6] Under these standards, appellate courts have held that a complaint containing a defense on its face is based upon an indisputably meritless legal theory.[7]

---

4. 28 U.S.C. § 1915(e)(2)(B)(i)(2004).

5. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). (In 1996, Congress amended 28 U.S.C. § 1915. At that time, the statute section addressing the standards for dismissing a frivolous complaint was reclassified from § 1915(d) to § 1915(e)).

6. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

7. *Pino v. Ryan*, 49 F.3d 51, 53 (2nd Cir. 1995), *citing*, *Neitzke*, 490 U.S. at 327.

The Eleventh Circuit reviewed the record Davis submitted following the dismissal of her Amended Complaint and affirmed the district court's Order because her allegations established that she failed to timely file a charge of discrimination alleging race discrimination.[8] Based upon the facts pled in her Amended Complaint, Davis could not establish that she complied with a prerequisite to maintain her cause of action; therefore, the dismissal was affirmed.[9] This decision is consistent with the direction provided by this Court.[10] Furthermore, the other circuit courts of appeals have also held that a claim, filed under 28 U.S.C. § 1915, is frivolous when it contains a defense on the face of the complaint.[11]

---

8. Petition App. 5.

9. *Id.* at 5.

10. *Neitzke*, 490 U.S. at 327 (claims in which a defendant is immune from suit are an example of claims that are subject to dismissal under 28 U.S.C. 1915[e]).

11. *Nasim v. Warden, Maryland House of Corrections*, 64 F.3d 951, 956 (4th Cir. 1995) (*en banc*) (statute of limitations), *cert denied*, 516 U.S. 1177 (1996); *Pino v. Ryan*, 49 F.3d 51 (2nd Cir. 1995) (statute of limitations); *Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994) (statute of limitations); *Johnson v. Rodriguez*, 943 F.2d 104, 110 (1st Cir. 1991) (statute of limitations), *cert. denied*, 502 U.S. 1063 (1992); *Street v. Vose*, 936 F.2d 38, 39 (1st Cir. 1991) (statute of limitations), *cert. denied*, 502 U.S. 1063, (1992); *Clark v. Georgia Pardons and Parole Board*, 915 F.2d 636, 640 & n. 2 (11th Cir. 1990) (dictum concerning affirmative defenses generally); *Wilson v. Lynaugh*, 878 F.2d 846, 851 (5th Cir. 1989) (*res judicata*), *cert. denied*, 493 U.S. 969 (1989); *Yellen v. Cooper*, 828 F.2d 1471, 1476 (10th Cir. 1987) (waiver); *Kimble v. Beckner*, 806 F.2d 1256, 1257 (5th Cir. 1986) (immunity); *Sanders v. United States*, 760 F.2d 869, 872 (8th Cir. 1985) (*per curiam*) (jurisdiction based on Plaintiff's failure to timely exhaust administrative remedies); *Moore v. Burger*, 655 F.2d 1265, 1266 (D.C. Cir. 1981) (immunity); *Johnson v. Reagan*, 524 F.2d 1123, 1124 (9th Cir. 1975) (immunity).

B. An *Individual Employee* Who Files Suit Under Title VII of the Civil Rights Act Must Establish That She Has Satisfied All Prerequisites, Including the Filing of a Timely Charge of Discrimination, in Order to Maintain a Claim Against Her Employer.

A prerequisite for filing suit under Title VII is the timely filing of a charge of discrimination.[12] Because Florida is a "deferral state,"[13] Title VII of the Civil Rights Act requires an individual to file a charge of discrimination within "three hundred days after the alleged unlawful employment practice occurred. . . ."[14] The failure to meet this prerequisite subjects a complaint to dismissal.

The Eleventh Circuit determined that Davis's Amended Complaint alleged that she was terminated in 1998 but did not file her charge of discrimination until 2003, five years after she was terminated.[15] Therefore, her failure to timely file her charge prevented her from maintaining a cause of action.[16]

---

12. 42 U.S.C. § 2000e-5(e)(1); *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002).

13. Deferral states "prohibit the unlawful employment practice at issue and have established state or local authorities to grant or seek relief for such practice." *Maynard v. Pneumatic Products Corp.*, 256 F.3d 1259, 1262-63 (11th Cir. 2001).

14. 42 U.S.C. § 2000e-5(e)(1).

15. Petition at 2, App. 4-5.

16. *Id.* at 5.

C. The Holding of the Eleventh Circuit Follows This Court's Decisions and Is Consistent With the Other Circuit Courts of Appeals That Have Addressed the Issue.

This Court has held that a complaint filed against a defendant that is immune from suit is subject to dismissal under § 1915(e).[17] This holding is based upon the broad statutory power given to district courts under the statute.[18] Furthermore, the Eleventh Circuit's decision consistently applies the analysis adopted by the other courts of appeals that have addressed the issue.[19] Consequently, the issue is not one that needs to be addressed by this Court, as Title VII of the Civil Rights Act clearly provides that an alleged victim of discrimination must file a timely charge of discrimination in order to maintain an action under that statute.[20]

D. Statement of the Proceedings Below.

Davis filed her Complaint on January 30, 2004, alleging race discrimination and retaliation under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"), along with a Motion for Leave to Proceed *In Forma Pauperis*. The district court dismissed the Complaint, *sua sponte*, without prejudice on February 17,

---

17. *Neitzke*, 490 U.S. at 327 (citations omitted).

18. *Id.*

19. *See* n. 11 *supra*.

20. 42 U.S.C. § 2000e-5(e)(1).

2004, and gave Davis 30 days to file an amended complaint. It deferred consideration of the Motion for Leave to Proceed *In Forma Pauperis* until Davis filed an amended complaint. The district court dismissed the Complaint because Davis did not identify the time when the discrimination took place and type of discrimination she was alleging during that time frame. PCSO was not served with the Complaint.

An Amended Complaint was filed on August 5, 2004, alleging race discrimination and retaliation under Title VII. The district court dismissed the Amended Complaint, *sua sponte*, with prejudice on August 6, 2004, because the Amended Complaint alleged facts establishing Davis's failure to meet the prerequisite of a timely filed charge of discrimination.

Davis filed a Motion for Reconsideration on December 27, 2004. The motion was denied on December 28, 2004, because it was untimely.

On January 27, 2005, Davis filed a Notice of Appeal. She subsequently filed an Affidavit of Indigency on January 28, 2005. The district court considered the affidavit to be a Motion for Leave to Appeal *In Forma Pauperis* and denied the motion because the district court considered the appeal to be frivolous.

E. Counterstatement of Facts

Davis has failed to include any record support for the facts contained within her "Statement of the Case" outside of those found by the district court and the Eleventh Circuit Court of Appeals in their respective orders.[21] The relevant

21. *See* Petition App. 1-7.

facts cited in the Eleventh Circuit's order are: (1) the most recent acts of alleged discrimination occurred on or about May 1998, (2) Davis did not file her charge of discrimination with the EEOC until May or June 2003, (3) Davis had 300 days to file her charge of discrimination, and (4) Davis did not satisfy the prerequisite of a timely filed charge.[22]

The allegations contained in Davis's charge of discrimination filed following her termination from PCSO alleged that she was discriminated against based upon her marital status.[23] There was no claim of race discrimination in the charge and the state agency did not consider any race discrimination claims in its subsequent investigation into the allegations.[24]

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with a decision of this Court or any court of appeals, nor do they implicate a federal question that has not been decided by this Court. Instead, Davis has argued that the decisions below were based upon an erroneous legal conclusion. Accordingly, Davis has

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22. *See Id.* 4-5.

23. Petition App. 9. In support of her Petition for Writ of Certiorari, Davis attached the "Final Order Dismissing Petition For Relief From An Unlawful Employment Practice" issued by the Florida Commission on Human Relations. (Petition App. 9). This Order was not a part of the appellate record and was never attached in support of Davis's Complaint or Amended Complaint. Therefore, it is not properly before this Court. Nonetheless, PCSO cites this order, in an abundance of caution, to establish that Davis's initial charge of discrimination did not allege race discrimination.

24. *Id.*

not carried her burden of demonstrating any "compelling reasons" for the Petition to be granted.[25]

A. The Law Regarding A District Court's Discretion to Dismiss a Complaint Filed *In Forma Pauperis* Is Well-Established.

The dismissal of a frivolous *in forma pauperis* complaint is a discretionary decision, reviewable under an abuse standard.[26] Pursuant to this standard, the Court has established broad parameters for determining when an *in forma pauperis* complaint may be dismissed.[27] It has ruled that district courts not only have the authority to dismiss claims based upon an indisputably meritless legal theory, but also that courts have the power to pierce the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless.[28]

As part of this broad power, the Court has held that dismissal of such a complaint is appropriate when the district court is satisfied that the complaint is frivolous.[29] While a district court should be cautious when dismissing a complaint, this "caution need not lead to paralysis, and

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25. Sup. Ct. R. 10 ("A petition for Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

26. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

27. *Neitzke v. Williams*, 490 U.S. 319, 328 (1984).

28. *Neitzke*, 490 U.S. at 328.

29. *Neitzke*, 490 U.S. at 327.

whenever a district court is satisfied that a complaint is 'based on an indisputably meritless legal theory,' . . . it has the discretion to dismiss the complaint under section 1915[e]."[30] "[A] complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis in either law or fact."[31] Furthermore, the Court has declined to provide definitive "guideposts" regarding the definition of a frivolous claim; instead, it has held that the decision is entrusted to the discretion of the court entertaining the *in forma pauperis* complaint.[32] District courts are entrusted with the decision to determine if a complaint is "clearly baseless" because they are in the best position to analyze the complaint.[33]

An individual district court's authority to determine whether or not a complaint is frivolous is expressly granted by statute.[34] Pursuant to the statutory language, the circuits that have addressed this issue have all reached the same conclusion; "an indisputably meritless legal theory" includes a complaint that contains a defense on its face.[35] As the Second Circuit Court

30. *Pino v. Ryan*, 49 F.3d 51, 53 (2nd Cir. 1995).

31. *Neitzke*, 490 U.S. at 325.

32. *Denton*, 504 U.S. at 33.

33. *Denton*, 504 U.S. at 33.

34. *See* 28 U.S.C. § 1915(e).

35. *Nasim v. Warden, Maryland House of Corrections*, 64 F.3d 951, 956 (4th Cir. 1995) (*en banc*) (statute of limitations), *cert denied*, 516 U.S. 1177 (1996); *Pino v. Ryan*, 49 F.3d 51 (2nd Cir. 1995) (statute of limitations); *Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994) (statute of limitations); *Johnson v. Rodriguez*, 943 F.2d 104, 110 (1st Cir. 1991) (statute of limitations), *cert. denied*, 502 U.S. 1063

(Cont'd)

of Appeals explained, this conclusion is based upon the Supreme Court having "explicitly pointed toward [this] result . . . by citing 'claims against which it is clear that the defendants are immune from suit' as an example of claims dismissible under section 1915[e]."[36]

In order to determine whether or not a district court abused its discretion, this Court has established several general guidelines that should be considered when analyzing the dismissal of an *in forma pauperis* complaint.[37] They include: (1) whether or not the plaintiff was proceeding *pro se*, (2) whether the court inappropriately resolved a genuine issue of disputed fact, (3) whether the court applied an erroneous legal conclusion, (4) whether the court has provided a statement explaining the dismissal that facilitates "intelligent appellate review," and (5) whether the case was

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(Cont'd)

(1992); *Street v. Vose*, 936 F.2d 38, 39 (1st Cir. 1991) (statute of limitations), *cert. denied*, 502 U.S. 1063, (1992); *Clark v. Georgia Pardons and Parole Board*, 915 F.2d 636, 640 & n. 2 (11th Cir. 1990) (dictum concerning affirmative defenses generally); *Wilson v. Lynaugh*, 878 F.2d 846, 851 (5th Cir. 1989) (*res judicata*), *cert. denied*, 493 U.S. 969 (1989); *Yellen v. Cooper*, 828 F.2d 1471, 1476 (10th Cir. 1987) (waiver); *Kimble v. Beckner*, 806 F.2d 1256, 1257 (5th Cir. 1986) (immunity); *Sanders v. United States*, 760 F.2d 869, 872 (8th Cir. 1985) (*per curiam*) (jurisdiction based on Plaintiff's failure to timely exhaust administrative remedies); *Moore v. Burger*, 655 F.2d 1265, 1266 (D.C. Cir. 1981) (immunity); *Johnson v. Reagan*, 524 F.2d 1123, 1124 (9th Cir. 1975) (immunity).

36. *Pino v. Ryan*, 49 F.3d at 53, *quoting*, *Neitzke*, 490 U.S. at 327 (citation omitted).

37. *See Denton*, 504 U.S. at 33-34.

dismissed with or without prejudice.[38] None of these factors creates a basis to overturn the Eleventh Circuit's affirmation of the dismissal.

In the present matter, the district court recognized that Davis was proceeding *pro se*. It gave Davis the opportunity to correct the frivolity of her Complaint by providing her with a roadmap for meeting the prerequisite to maintaining her claim.[39] The dismissal, without prejudice, explained the steps Davis needed to take in order to establish that she timely filed the underlying charge of discrimination to maintain a claim.[40] Because Davis's Amended Complaint demonstrated that Davis did not meet a prerequisite needed to proceed with her lawsuit, the court dismissed it.[41]

The dismissal of Davis's Amended Complaint did not result from the inappropriate resolution of genuine issues of disputed fact. The only facts presented were those alleged in Davis's Amended Complaint. Accepted as true, these alleged facts established the timeline of events that proved the meritless nature of her claims.[42] Consequently, neither the district court nor the Eleventh Circuit Court of Appeals was

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38. *Denton*, 504 U.S. at 34 (citations omitted).

39. *See* Petition App. 5.

40. *Id.*

41. *Id.*

42. *See* Petition App. 4, 5-6. Davis alleged that she was discriminated against most recently in 1998 as a result of her termination. Davis subsequently alleged that she filed her charge of discrimination with the EEOC in 2003.

required to resolve any factual disputes because Davis's own pleadings established that she failed to meet a prerequisite to maintain her claim.[43]

Further, the Amended Complaint's dismissal was not based upon an erroneous legal conclusion. The timely filing of a charge of discrimination is a statutorily created prerequisite to bringing suit under Title VII.[44] Based upon the allegations within the Amended Complaint, the district court concluded that it should be dismissed. This decision and the Eleventh Circuit's affirmation simply applied the statute's articulated standards and this Court's prior holdings.[45]

Finally, the Order dismissing Davis's Amended Complaint with prejudice clearly articulated why it was being dismissed. The district court provided Davis with a roadmap to follow when it dismissed her complaint.[46] This gave Davis the opportunity to file an Amended Complaint evidencing the timely filing of a charge of discrimination, if she could.[47] After reviewing the district court's dismissal, the Eleventh Circuit was able to analyze the basis for the district court's holding, cited the same facts evidencing Davis's failure to establish the prerequisite and determined that Davis could

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43. *Id.*

44. 42 U.S.C. § 2000-5(e)(1); *see also National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 110 (2002).

45. *See Id.*

46. *See* Petition App. 5.

47. *Id.* at 5.

not maintain her claim.[48] As a result, the Eleventh Circuit also concluded that the Amended Complaint was frivolous.

The current Petition does not even address, let alone establish, that the Eleventh Circuit erroneously decided any of the factors used to analyze whether or not the district court abused its discretion by dismissing the Amended Complaint. Therefore, Davis cannot establish that the district court abused its discretion by dismissing the Amended Complaint.[49]

Even if Davis had persuasively argued that the dismissal of her Amended Complaint was an abuse of discretion, that would not be enough to proceed before this Court. Davis needed to meet the more strenuous burden of demonstrating that there are compelling reason to grant the Petition.[50] Nonetheless, Davis has not asserted any argument addressing a compelling reason.[51] Instead, Davis simply asserts that the decisions below were based upon erroneous factual findings.[52] Consequently, she has not met her burden and this Petition should be denied.

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48. *Id.* at 4.

49. *See Neitzke*, 490 U.S. at 327 (dismissal is appropriate when defendants are immune from suit).

50. *See* Sup. Ct. R. 10.

51. *Id.*

52. Petition at 4.

B. The Eleventh Circuit's Application of 42 U.S.C. § 2000e-5(e)(1) is Consistent With the Standards Applied by This Court.

Even if the Court were to consider exercising its judicial discretion to grant the Petition based upon Petitioner's argument that the decision was based upon erroneous factual findings, there is no merit to her claims.[53] It is well established that an individual filing suit under Title VII of the Civil Rights Act of 1964, as amended, must timely file a charge of discrimination.[54] The failure to file a charge timely results in an individual losing her ability to recover from a discrete act of discriminatory conduct.[55] Applying the statutory language and this Court's rulings, appellate courts have uniformly held that such failure subjects a subsequent complaint to dismissal.[56]

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53. *See* Sup. Ct. R. 10. ("A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of properly stated rule of law.")

54. 42 U.S.C. § 2000e-5(e)(1); *see also Love v. Pullman Co.*, 404 U.S. 522, 523 (1972) ("A person claiming to be aggrieved by a violation of Title VII of the Civil Rights Act of 1964 . . . may not maintain a suit for redress in federal district court until he has first unsuccessfully pursued certain avenues of potential administrative relief.").

55. *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 110 (2002).

56. *See Maynard v. Pneumatic Prods. Corp.*, 256 F.3d 1259, 1262 (11th Cir. 2001).

Because Florida is a "deferral state,"[57] Davis was required to file a charge within three hundred days after the alleged unlawful employment practice occurred.[58] Nonetheless, Davis's allegations evidenced her failure to act within this time limit.[59] Davis alleged that she was terminated in 1998 and subsequently filed a charge with the EEOC in May or June of 2003.[60] This was five years after the alleged discriminatory act and well outside the applicable parameters.[61] This failure is fatal to her claim because the timely filing of a charge is mandatory.[62]

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57. Under Title VII, a deferral state is one that prohibits the unlawful employment practice at issue and has established State or local authorities to grant or seek relief for such practice. *See E.E.O.C. v Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 1271 (11th Cir. 2002).

58. 42 U.S.C. § 2000e-5(e)(1).

59. *See* Petition App. 4.

60. *Id.*

61. Davis appears to contend that she timely filed her charge of discrimination with the EEOC because it was filed within thirty days after receiving notice that the State or local agency terminated its proceedings under the State or local law. (Petition at 2). However, Davis's argument ignores the relevant statutory language. In particular, an individual must file a charge within three hundred days or "within thirty days from receiving notice that the State or local agency has terminated the proceedings under State or local law, *whichever is earlier.*" 42 U.S.C. § 2000e-5(e)(1) (emphasis added). Davis was disqualified from filing within thirty days of her notice that the State agency terminated its proceedings because it was more then three hundred days after the alleged incident.

62. *National Passenger Railroad*, 536 U.S. at 110.

In affirming the district court's dismissal of Davis's Amended Complaint, the Eleventh Circuit properly applied the standards articulated by this Court. Therefore, the Eleventh Circuit correctly concluded that the district court did not abuse its discretion by dismissing the Amended Complaint with prejudice.

CONCLUSION

For the foregoing reasons, Davis's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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(3)

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No. 05-1406

IN THE

SUPREME COURT OF THE UNITED STATES

SHEILA DAVIS,

Petitioner,

v.

POLK COUNTY SHERIFF'S OFFICE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

The decision of the Eleventh Circuit should not be sustained, because Petitioner presented satisfactory proof which is evidence that petitioner had satisfied what was previously required to file a timely filed charge. Nevertheless, to bring suit and include any matter alleged in the charge or, to the extent permitted by court decisions. (See EEOC's "Notice of Suit Rights" to Petitioner).

Respondent's Brief in Opposition to the Petition for Writ Of Certiorari clearly demonstrates why the Petition should be granted by stating "It is well established that an individual filing suit under Title VII of the Civil Rights Act of 1964, as amended, must timely file a charge of discrimination." EEOC never stated that Petitioner filed an untimely charge.

REASONS FOR GRANTING THE WRIT

An important question of federal law needs to be settled by this court, pursuant to Supreme Court Rule 10(c). This court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

Petitioner has evidenced within her Petition for Writ of Certiorari her reasons for granting the review. Petitioner states the words "frivolous" and/or "malicious" doesn't apply to her. Several wrongful acts were committed by Respondent, such as wrongful termination of employment, defamation of character and slander, disparate treatment, and harassment, which concluded that it was all racial and dominant, because of her membership in a protected group

that led to the adverse employment action of termination. Therefore complaint was amended to racial discrimination.

Petitioner contends that there's nothing wrong, nor frivolous, nor malicious in analyzing the harm done to her and becoming fully aware of how she was truly discriminated against for her trying to exercise her rights under the Constitution of the State of Florida, Article 1 § 2, since the burden of proof lies upon petitioner.

Petitioner proceeds that she may not have provided the most efficient representation as pro se, but the facts, harm and memories remain with the petitioner. Petitioner states that Certiorari shouldn't be denied because of a typo and/or clerical error of her amended complaint which reads "8. I filed charges with the Equal Employment Opportunity Commission regarding Defendant's alleged discriminatory conduct on or about May or June 2003." Petitioner contends that the alleged discrimination occurred on or about January – May 1998. Petitioner filed charges with FCHR October 7, 1998 and requested substantial weight review within 15 days through EEOC in March 2003, for this was petitioner's other alternative if she didn't want to appeal FCHR's decision within 30 days. Petitioner was issued a "Notice of Suit Rights" from EEOC in December 2003.

January 2004, Petitioner followed along with the district court's step-by-step guide, and was unaware that she typed an error (clerical), concerning the agency's names and dates. The district court states that they directed Plaintiff/Petitioner to notify the court of the findings of the local agency which investigated Plaintiff's/Petitioner's claim, but Plaintiff/Petitioner has not done so, but truth is, the Plaintiff/Petitioner never received an order stating this. Petitioner contends that she would've never withheld this

type of evidence (findings of local agency who investigated claim) from the court, for it's evidence that a timely charge was filed in order to proceed to another level of her claim.

Petitioner contends that this court should grant the writ for careful review. Respondent should not be allowed to discriminate nor abuse their authority any longer against employees, inmates, nor anyone in society. This court should review to stop injustice from prevailing towards petitioner as well as others who, may go through the same or similar legal action as petitioner, someday, if they're not restrained by intimidation or inferiority to pursue justice. Nevertheless, this court should carefully review all evidence that has been presented by petitioner.

Petitioner states that for the record, she has analyzed memos and reports that are relevant to her claim, which proves racial discrimination and dominance from respondent, as well as their untruthfulness.

CONCLUSION

The court should grant this petition and reinforce the importance and respect of equal employment opportunity.

Respectfully Submitted,

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Supreme Court, U.S.
FILED
OCT 24 2006
OFFICE OF THE CLERK

(4)

No. 05-1406

IN THE

SUPREME COURT OF THE UNITED STATES

SHEILA DAVIS,

Petitioner,

v.

POLK COUNTY SHERIFF'S OFFICE.

Respondent.

PETITION FOR REHEARING

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PETITION FOR REHEARING

This petition is presented together with certification of Sheila Davis, pro se, and is restricted to the grounds specified in paragraph 2 of Rule 44 of this court, and nevertheless, presented in good faith and not for delay.

Pursuant to Title VII of the Civil Rights Act of 1964, EEOC issued a Notice of Suit Rights to petitioner dated November 25, 2003.

Petitioner states the following reasons for Petition For Rehearing:

1. Petitioner shows evidence of how she was falsely accused of insubordination as well as other absurd accusations/allegations that were generated on incident reports and memos by all white people of respondent. Petitioner has been racially discriminated and retaliated against, defamed, belittled (by typing or writing figure of speech phrases used per say, by black people to make it seem like petitioner actually said these terms, all because she was black. ie., "chill", "tripping"), ridiculed, wrongfully accused misinterpreted (by taking black cultural jests and blowing them extremely out of proportion, ie., "pop a cap,"), emotionally oppressed and deprived of her right just to defend one's life and liberty, pursue happiness and be rewarded for her work because of her race.

Respondent demanded other white employees to write incident reports on petitioner to make it look like petitioner was insubordinate. One of respondent's members (Lisa Sheffield) refused to write incident report on petitioner, and verbally stated petitioner didn't do anything wrong and the supervisor Sgt. Kevin Marshall was wrong in his actions. Petitioner was labeled as "a time bomb waiting to explode, and if she continue working without treatment, she may become violent and dangerous while at work,"

per Capt. Joseph Watson. Petitioner was told to undergo psychological evaluation before returning to work. Although evaluation was unnecessary, petitioner complied with respondent's orders, and was told to return to work, but when she returned to work, she was still harassed by respondent.

Moreover, respondent went to the extreme to harass petitioner, to find an excuse to terminate petitioner's employment. Respondent harassed petitioner by preying on the fact that petitioner was a victim of domestic violence to make it seem as though petitioner was involved in her ex-husband's criminal activities, because of a false accusation stating that petitioner communicated criminal information to her ex-husband in order for him to create false bank accounts in inmates names. Petitioner agreed to take polygraph test and once polygraph was administered, polygrapher examiner rigged test to make it seem as though petitioner was being deceiving. Polygrapher (Bryant P.White) examiner stated that petitioner had to keep her eyes closed during the test, until testing was completed. Respondent sent B/C Quartashia Tucker for a polygraph and stated she was telling the truth. Petitioner stated she personally investigated and found that Ms. Tucker was not truthful. (January 2004, Quartashia Tucker was arrested for Scheming To Defraud concerning other activities.) Nevertheless, once entire criminal investigation of petitioner was completed by respondent and respondent seen that petitioner didn't commit a crime, respondent still continued to harass petitioner by taking her behind closed doors in internal affairs investigations, with no witnesses of her own, and aggresively telling her to "be quiet!," "shut up!," for respondent didn't wish to hear the truth on any issues concerning petitioner. Therefore, petitioner was threatened that she would accrue charges of not being respectful to supervisors, or not following supervisors instructions or authority, or being abusive to supervisors. Petitioner was also charged with untruthfulness, communicating criminal information, and Association with

criminals. In the end, Petitioner filed a grievance on Internal Affairs and immediate supervisor, Lt. Tommy Cockroft, in April 1998, and submitted by hand to Major Willie Hall, (who is currently promoted to Col. or Chief Willie Hall) who stated to petitioner "You can do that", never submitted petitioner's grievance to the past Colonel for consideration or review. Col./Chief Willie Hall, a black man who is used by respondent to obscure the fact that all white people discriminated against petitioner, exonerated all acccusations/allegations on petitioner, except for Association with criminals and recommended 8 hour suspension without pay because she was married to her ex-husband when Col. Hall knew she was married to her ex-husband a year before the false accusation came about of petitioner communicating criminal information to her ex-husband, for he verbally informed her to make a copy of her marriage license to place inside her personnel file. On February 24, 1997, petitioner gave human resources a copy of her marriage license to place inside of her personnel file. Petitioner later learned through detectives that a copy of her marriage license was not in her personnel file, from viewing lengthy administrative investigation #97-064. The above recommendation was wrong in itself because respondent has too many employees who were and still are either dating or married to someone who has committed crimes, whether minor or major. Petitioner, states that she's led to believe Col./Chief Willie Hall may have felt compelled to recommend such action, to obscure the fact that he and petitioner had become closely acquainted, as friends, so to speak. Per petitioner's paper diary, On May 15, 1998, respondent's administrator, Floyd Steve Hulsey, spoke to petitioner in his office and advised her that termination is being recommended and tried to force petitioner to resign by stating he'll give petitioner time to consider over the weekend whether termination or resignation would look better on her record, for he is going on vacation, also. Petitioner stated to administrator that she will pray about it and appeal the recommendation if respondent is

recommending termination. On May 28, 1998, at 3:49 p.m., Mr. Hulsey left a voice mail message on petitioner's voice mail system,
stating that he was away for a week and he came back today and he didn't see any papers on his desk and he wanted to know what petitioner was going to do. Petitioner returned Mr. Hulsey's phone call and informed him once again that she was going to appeal the recommendation. Petitioner attended civil board hearing with respondent, with Bruno DeZayas, atty., to appeal termination and respondent tried to swiftly offer petitioner back pay. Later, petitioner lost appeal.

2. Petitioner shows evidence that respondent is currently in the news media (The Lakeland Ledger- the ledger.com) as of September 8, 2006, revealing Capt. Mark J. DeComo, who is described as a "survivalist" instead of "supremacist"who has now become ex-employee of respondent, who was surveillanced of stealing ammunition from respondent, and having the material to build explosive devices, including chemicals, gun powder, strikers with primer and grenade shells. Furthermore, petitioner shows evidence
where September 23, 2006, Col./Chief Willie Hall decides that he wants to retire, because he wants to turn the heat down a little bit.
Nevertheless, Major Dale Tray who also wants to retire, after he has written "Two week notice waived" s/dale tray" on Captain Mark DeComo's letter of resignation/retirement letter to respondent. Petitioner states that respondent is definitely covering up more than they're speaking of. Petitioner contends that she's never been
arrested, and has been dominated and terminated by respondent for no reason, nevertheless, labeled as "a time bomb waiting to explode," and Capt. Mark DeComo is labeled, with high respect as a "survivalist" instead of "supremacist,"gets to resign/retire when he has been arrested for (1.) Tampering with evidence (2.) Petit Theft (3.) Possession of a destructive device (4.) Culpable Negligence for

endangering others and was set a low bond of $2,750. Petitioner feels that this type of surveillanced activity should've received automatic termination with no retirement. Capt. Mark DeComo was also investigated and surveillanced of having a German war shirt replete with a swastika and a copy of a white supremacist novel "The Turner Diaries". Petitioner rhetorically asks...how come these events have finally become a revelation, since a few days before petitioner's certiorari began conference on September 25, 2006.

3. Petitioner shows evidence of respondent, (past media) where respondent reveals even more brutality towards inmates, other than inmate James Gilliard being brutalized- whereas petitioner was retaliated against for reporting the incident.

For these reasons, Petition For Rehearing should be granted, for petitioner also deserves necessary compensation. Furthermore, respondent's sham needs to be recognized and dealt with accordingly. No innocent person, no matter what their race is, or any situation that falls under the FL Const. Article 1 § 2 should receive injustice and the guilty be favored. Should the courts plant the seed of injustice, disaster will spring up. (View Appendices)

App. 1

INCIDENT REPORT
FACILITY JAil

INMATE'S NAME Gilliard, James BI# 98-152 CELL
DATE OF INCIDENT 1/3/98 TIME OF INCIDENT
**1530 = = =

App. 2

(Q CONT'D PAGE)

WAS DR AUTHORIZED ? ____IF YES, BY WHOM
FOR LIST #

s/Shelia Davis # 3787
REPORTING OFFICER'S SIGNATURE & #

DATE 1/3/98 TIME 2116

PCSO FORM 703 (REV 08/94)

SUPERVISOR'S SIGNATURE & #

DATE_____TIME

PAGE 1 OF 1

INCIDENT REPORT
FACILITY Jail

App. 3

INMATE'S NAME_____ BI#
_____CELL

DATE OF INCIDENT 1/4/98____TIME OF INCIDENT
Estimated
Time- 21:30

= = = =

App. 4

DATE 1-5-98 TIME 1810

_____#
SUPERVISOR'S SIGNATURE &

#

DATE_____TIME

,

PAGE 1 OF 2

INCIDENT REPORT FACILITY
JAil

INMATE'S NAME _____BI#
CELL

DATE OF INCIDENT _____ TIME OF INCIDENT
= = = = = = = = = = = == = = = = = = = = = = = = = = = == = =

NARRATIVE: information window, that was similar to the incident
that happened to me. (An incident that happened to him in the past) So, we joked about that.

Well, about 30 or 40 minutes later, I was sitting quietly at my desk and waiting until there was someone to book, and Sgt. Marshall had walked out of the housing area and came to my
desk, asking me was I calm. I told him that I was calm and that I
was I was over that, and I told him that he needed to ask that lady at
the window if she was alright, because she started taking things out on me.

Later, I walked on the tower and I looked to see if anyone was being brought in receiving, and D/D Hawley started

joking with me again about the incident that occurred concerning the lady at the window and me. So, that's when I said, "Hawley, my mind is on much greater things than that lady, so I'm not going to worry about her." I told Hawley that I was thinking about something happened in my (Q CONT'D PAGE)

WAS DR AUTHORIZED ? _____ IF YES, BY WHOM

FOR LIST #

s/ Shelia Davis # 3787

REPORTING OFFICER'S SIGNATURE & #

DATE 1-5-98 TIME 1810

_____#

SUPERVISOR'S SIGNATURE &

#

DATE _____TIME

PAGE 1 OF 3

INCIDENT REPORT FACILITY

JAil

INMATE'S NAME _____BI#

CELL

DATE OF INCIDENT _____ TIME OF INCIDENT

= = = =

NARRATIVE: family, concerning my brothers and that I hope that they were alright. Sgt. Marshall entered the tower and asked me again was I calm; and again I said, yes. I asked Sgt. Marshall why does he keep asking me if I'm calm when I've already told him that I'm calm and I'm alright. I told him he keeps asking me as though he wants me to be mad or something. So, he started saying that he wanted me to work the tower because I needed to calm down, so, D/D Hawley said, "Sgt. Marshall, Shelia didn't keep bringing up the incident, I just happened to tease Shelia about what happened, but Shelia's ok and I'm always kidding around with her." Sgt. Marshall still told me (persistently) to work the tower, so I told him I had to use the bathroom first. He told me to go to the bathroom, and then come back, so that Hawley can go out to receive. When I came back, I worked the tower and I also was (QCONT'D PAGE)

WAS DR AUTHORIZED ? _____ IF YES, BY WHOM
FOR LIST #

s/ Shelia Davis # 3787
REPORTING OFFICER'S SIGNATURE & #
DATE 1-5-98 TIME 1810

SUPERVISORS SIGNATURE &

#

DATE_____TIME

PCSO FORM 703 (REV 08/94)

INCIDENT REPORT FACILITY
JAil

INMATE'S NAME _____BI#
_____CELL

DATE OF INCIDENT _____ TIME OF INCIDENT

NARRATIVE: talkingto B/c Lisa - - - and then Sgt. Marshall entered the tower again and told me to come into his office. I went into his office and he had Sgt. Coulter with him, and they kept watching me. Sgt. Marshall said that he wanted to send me home for insubordination . I asked him how was I being insubordinate and he said tthat he asked me to worked the tower and I told him that I wasn't doing a got d- - thing. I, Shelia, was highly upset, and I told him that I'm a woman, and I'm not afraid to admit when I'm wrong, but he was lying and I don't even say anything like that. I told him that I don't have a problem with going home, but I was going to get to the bottom of this and I told Sgt. Marshall and Sgt. Coulter that I would go to the NAACP and EEOC. So, Sgt. Coulter said, "Shelia don't make any threats and just leave while you're ahead." So I told him that I wasn't making threats at all. And then I told the both of them, that while (Q CONT'D PAGE)

WAS DR AUTHORIZED ? _____ IF YES, BY WHOM
FOR LIST #

s/ Shelia Davis # 3787
REPORTING OFFICER'S SIGNATURE & #

App. 8

DATE 1-5-98 TIME 1810
PCSO FORM 703 (REV 08/94)

SUPERVISOR'S SIGNATURE & #

DATE _____ TIME

PAGE 1 OF 5

INCIDENT REPORT FACILITY
JAil

DATE OF INCIDENT _____ TIME OF INCIDENT

NARRATIVE: they were at it, to include in their report that I was the only black book- in clerk working tonight.
Lt. Cockroft:
Sgt. Marshall was being dishonest and he also made a statement on the tower, for no reason at all, that he would send me home for the rest of the night with no pay, and once I was in the office with him and Sgt. Coulter, he told me to give him my I.D. but I told him I didn't have my I.D. member badge with me, so he told me to just leave. It's as though he were trying to provoke me, but I
don't understand it at all.

(Q CONT'D PAGE)

WAS DR AUTHORIZED ? _____ IF YES, BY WHOM

FOR LIST #

s/ Shelia Davis # 3787
REPORTING OFFICER'S SIGNATURE & #

DATE 1-5-98 TIME 1810

PCSO FORM 703 (REV 08/94)

SUPERVISORS SIGNATURE & #

DATE_____ TIME

JANUARY 04, 1998 BARTOW, FL

DEPARTMENT OF DETENTION

BOOK IN TEAM #4

TO: LT. COCKROFT
FROM: SGT. MARSHALL s/km
SUBJECT: BOOK IN CLERK SHEILA DAVIS #3787

I WAS APPROACHED BY BOOK IN CLERK SHEILA DAVIS #3787 IN MY OFFICE. SHE TOLD ME" SOME WOMAN AT THE WINDOW CALLED ME A BITCH ABOUT SOME KEYS, IF SHE DOES IT AGAIN I'M GONNA GO OUTSIDE AND CATCH A BATTERY CHARGE OR POP A CAP IN HER" . "SHE AIN'T

GONNA TALK TO ME LIKE THAT, SHE JUST DON'T KNOW ME". I TOLD HER TO CALM DOWN AND NOT GO BACK OUT TO THE INFORMATION WINDOW. I TOLD HER I WOULD GO AND HANDLE IT. I WENT OUTSIDE AND THERE WAS NO ONE THERE. I TOLD DAVIS TO CALM DOWN. SHE CONTINUED TO TELL ME THE STORY AGAIN WITH A MIXTURE OF THE FOLLOWING OVER AND OVER. "EVERYBODYS IN MY BUSINESS THEY NEED TO LEAVE ME ALONE". MY BROTHER AND FAMILY GOT HELD AT GUN POINT" . "PEOPLE JUST NEED TO LEAVE ME ALONE".I LET HER CONTINUE THIS BABBLE UNTIL SHE SEEMED TO CALM DOWN. I TOLD HER IF SHE HAS ANY PROBLEM AT THE INFORMATION WINDOW WITH THE PUBLIC TO WALK AWAY AND COME GET ME. SHE RETURNED TO HER BOOTH TO WORK AND I CONTINUED MY WORK. I OVERHEARD HER TELLING OTHER STAFF ABOUT THE INCIDENT AND SEEMED TO BE GETTING UPSET AGAIN. I ASKED HER IF SHE WAS CALMED DOWN. SHE RESPONDED YES IM OK. I LATTER WALKED BY HER BOOTH AND SHE WAS JUST SETTING THERE LOOKING DOWN AT HER DESKACTING DESPONDANT. I ASKED HER WAS SHE OK AGAIN, SINCE SHE WAS SO UPSET. SHE SAID YES. I WAS LATTER IN THE CONTROL TOWER OBSERVING THE RECEIVING AREA, WE WERE GETTING BUSY. D/D HAWLEY WAS WORKING IN THE CONTROL TOWER. DAVIS WALKED INTO THE CONTROL TOWER AND I TOLD HER I WANTED HER TO RELIEVE D/D HAWLEY. SHE THEN STARTED RAISING HER VOICE SAYING THE FOLLOWING. "WHY DO YOU KEEP MESSING WITH ME". "YOUR PICKING ON ME". "THIS MUST BE A BLACK WHITE THING". I IGNORED HER COMMENT AND TOLD HER AGAIN I WANT YOU TO RELIEVE D/D HAWLEY, THIS IS A ORDER IF YOU DO NOT RESPOND TO THIS ORDER I WILL BE FORCED TO SEND

YOU HOME. SHE THEN REPLIED "YOUR TRIPPING,YOU AIN'T NOTHING TO ME AND THEM STRIPS DON'T MEAN NOTHING EITHER". I TOLD HER THISWAS HER LAST ORDER. SHE THEN SAID SHE HAD TO GO TO THE RESTROOM. I TOLD HER TO GO AHEAD, BUT RELIEVE D/D HAWLEY WHEN SHE RETURNED. SHE DID RELIEVE D/D HAWLEY. I THEN CALLED LT. COCKROFT AT HOME AND NOTIFIED HIM OF HER INSUBORDINATION, DISRESPECT, UNPROFESSIONAL ATTITUDE AND BIZZARE BEHAVIOR. LT. COCKROFT ORDERED ME TO TAKE HER PCSO I.D. AND SEND HER HOME. I THEN TOLD SGT. COULTER THAT I HAD BEEN ORDERED TO SEND DAVIS HOME FOR THE
NIGHT AND I WOULD LIKE HIM TO WITNESS THE INCIDENT SINCE LT. LAWRENCE WAS OFF. HE SAID HE WOULD. I THENCALLED DAVIS INTO THE BOOKIN OFFICE. SHE CAME IN AND I TOLD HER I NEEDED HER PCSO I.D AND I WAS SENDING HER HOME FOR THE REMAINDER OF HER SHIFT, AND SHE WOULD BE NOTIFIED TOMMOROW BY LT. COCKROFT. SHE THEN STARTED RAISING HER VOICE AT ME AND REPEATING THE ABOVE MENTIONED STATEMENTS. I TOLD HER SEVERAL TIMES TO GIVE ME HER I.D AND LEAVE, BUT SHE JUST KEPT INTERUPTING ME. SHE STATED IT WAS A BLACK THING. SHE SAID SHE WANTED TO KNOW WHY I WAS SENDING HER HOME. I TOLD HER IT WAS BECAUSE SHE WAS BEING INSUBORDINAT TO ME. I AGAIN ASKED FOR HER ID. SHE SAID SHE DID NOT HAVE IT. I TOLD HER TO LEAVE THE PREMISES AGAIN . SHE THEN WENT TO HER BOOTH AND GOT HER THINGS. SHE SAID I WAS GOING TO PAY FOR THIS. SHE SAID SHE WAS GOING TO THE EEOC AND THE NAACP. SHE SAID YOUR JUST PICKING ON ME CAUSE IM THE ONLY BLACK BOOK IN CLERK. I TOLD HER TO LEAVE THE PREMISES, AND SHE

WOULD BE CONTACTED. SHE THEN LEFT THRU THE ADMINISTRATION SECURITY DOOR.

I DID RECEIVE A CALL ABOUT SOME KEYS NOT BEING RELEASED. I TOLD THE CALLER TO RETURN AND I WOULD MAKE SURE THEY WOULD GET THEM. THEY ASKED HOW THEY COULD COMPLAIN ABOUT DAVIS. I TOLD THEM TO ASK FOR A CITIZENS COMPLAINT FORM WHEN THEY CAME TO GET THE KEYS. NOBODY CAME TO GET KEYS RELEASED DURING THE REMAINDER OF MY SHIFT.

I RECOMMEND DISCIPLINARY ACTION FOR BOOK IN CLERK DAVIS FOR INSUBORDINATION, IMPROPER CONDUCT, AND A MENTAL EVALUATION IF RETAINED FOR EMPLOYMENT.

-POLK COUNTY SHERIFF'S OFFICE-

PAGE 1 OF 2

DEPARTMENT OF DETENTION

FACILITY JAIL

INCIDENT REPORT

INMATE'S NAME N/A BI# N/A

CELL N/A

DATE OF INCIDENT 01-04-98 TIME OF INCIDENT 2140 NATURE OF INCIDENT: BOOK-IN CLERK SENT HOME FOR

INSUBORDINATION.

NARRATIVE= LOCATION OF INCIDENT: BOOK-IN SGT'S OFFICE. OFFICERS PRESENT: SGT. COULTER, SGT. MARSHALL.

INCIDENT: ON 1-4-98 AT ABOUT 2140 HRS. SGT. MARSHALL ASKED ME (SGT. COULTER) TO COME INTO THE BOOK-IN SERGEANTS OFFICE AND WITNESS HIS CONVERSATION WITH BOOK- IN CLERK SHEILA DAVIS. SGT. MARSHALL CALLED MIS. DAVIS INTO THE OFFICE. SGT. MARSHALL TOLD MISS DAVIS THAT SHE NEEDED TO CALM DOWN AND PROCEEDED TO TRY TO EXPLAIN TO HER THAT HE CALLED LT. COCKROFT AND EXPLAINED THE SITUATION TO HIM AND THAT LT. COCKROFT TOLD HIM TO TAKE HER SHERIFF'S O FFICE I.D. AND SEND HER HOME AND TELL HER TO REPORT TO HIS OFFICE TOMORROW BUT WHEN HE TRIED TO EXPLAIN THIS TO MISS DAVIS SHE WOULD NOT LET HIM FINISH TALKING WITHOUT INTERRUPTING HIM. TELLING HIM THAT SHE DIDN'T HAVE TO COME TO HIM AND TELL HIM THAT SHE WAS HAVING A PROBLEM WITH A CIVILIAN AT THE WINDOW THAT SHE COULD HAVE JUST WENT OUTSIDE AND BEAT THE CIVILIAN UP. SHE ALSO TOLD SGT. MARSHALL THAT SHE DIDN'T APPRECIATE HIM ASKING HER IF SHE WAS ALRIGHT ALL THE TIME TREATING HER LIKE A CHILD AND THAT SHE FELT THAT HE WAS PICKING ON HER BECAUSE SHE WAS BLACK. AFTER SEVERAL TIMES OF TRYING TO EXPLAIN THE SITUATION TO HER HE TOLD HER THAT HE WAS [X]

CONT'D PAGE)

WAS DR AUTHORIZED ? ___ IF YES, BY WHOM
FOR LIST #

SGT. ROBBIE L COULTER
s/ Robbie L Coulter #2344 <----------#<--
-REPORTING OFFICER'S SIGNATURE&# SUPERVISOR'S SIGNATURE &#

DATE 01-05-98 TIME 0300 DATE <-----TIME<--
-

PCSO FORM 703 (REV 08/94)

DEPARTMENT OF DETENTION
INCIDENT REPORT CONTINUATION

ORDERING HER TO LEAVE THE PREMISES AND TO GIVE HIM HER SHERIFF'S OFFICE I.D. CARD. SHE TOLD HIM THAT SHE DIDN'T CARE ABOUT THE STRIPES ON HIS SLEEVE AND THAT HE WAS GOING TO TELL HER WHY HE WAS SENDING HER HOME. SGT. MARSHALL TOLD HER BECAUSE SHE WAS INSUBORDINATE. SHE TOLD HIM THAT IT WAS BECAUSE HE WAS PREJUDICE AND THAT HE WAS GOING TO PAY FOR THIS. AT THIS TIME SHE WENT TO HER BOOK-IN BOOTH AND RETRIEVED HER PERSONAL BELONGINGS AND TOLD SGT. MARSHALL AND MYSELF THAT SHE WAS GOING TO THE N.A.A.C.P. AND BOTH OF US WAS GOING TO GET IN TROUBLE FOR THIS, AND SHE WANTED IT KNOWN THAT SHE WAS THE ONLY BLACK CLERK ON DUTY. I TOLD HER THAT THERE WAS NO NEED TO MAKE THREATS THAT SHE COULD FILE A COMPLAINT

TOMORROW WITH LT. COCKROFT IF SHE WANTED. SHE THEN LEFT THE PREMISES.

ACTION TAKEN: * REPORT WRITTEN AND SUBMITTED

NOTE: I RECOMMEND THAT MISS DAVIS RECEIVE A MENTAL EVALUATION BEFORE SHE IS ALLOWED TO RETURN TO DUTY.

(| | CONT'D PAGE)
SGT. ROBBIE L. COULTER

s/ ROBBIE L COULTER # 2344 <--------#<--------
-- REPORTING OFFICER'S SIGNATURE
SUPERVISOR'S
SIGNATURE & #

DATE 01-05-98 TIME 0300 DATE <------ TIME<-----
=

PCSO FORM 704 (REV 08/94)

JAIL

N/A N/A B-I

05 Jan 1998 2115

HRS. = = =

AND PROFESSIONAL IN THE WAY HE CONVERSED WITH DAVIS. [ ] CONT'D PAGE)
END OF REPORT

N/A

#

s/Mary Winfield
REPORTING ~~OFFICER'~~S SIGNATURE & # 3878

0040
05 Jan 1998 ~~1622~~

s/Sgt. Marshall 3036

004?
05 Jan 1998

JAIL

N/A N/A B-I

05 Jan 1998 2115

HRS. = = =

MARSHALL RAISE HIS VOICE WHILE IN MY PRESENCE DURING HIS CONVERSATION WITH DAVIS, DAVIS WALKED OUT OF THE TOWER AND WENT TO THE RESTROOM. END OF EVENTS. [ ] CONT'D PAGE)

N/A

#

s/B Hawley

REPORTING OFFICER'S SIGNATURE & # 2940

05 Jan 1998 Time 1622

s/SGT Marshall 3036
SUPERVISOR'S SIGNATURE& #

0046
05 Jan 1998 TIME

January 6, 1998 **Records Section**

TO: **Major Willie E. Hall**

App. 20

Via Chain of Command s/Recommended

JGWatson,

Capt.

FROM: **Lieutenant Tom Cockroft s/**

SUBJECT: **B/C Sheila Davis, Member #3787**
ref: Fitness for Duty Evaluation

Based on the most recent incident concerning B/C Sheila Davis and
her suspension from duty on January 4, 1997, for insubordination, I am requesting that she be placed on administrative leave pending an evaluation for duty. I am making this request under G.O. 22.2., E., 2.,b which states, "In certain instances it may be necessary for members who have been injured either on the job or off the job, or members who are experiencing personal crisis, to be evaluated for the purpose of determining the members ability to carry out their assigned duties".

It is no secret that B/C Davis has been experiencing personal crisis due to previous and current actions of her husband. This has carried over into the workplace on several occasions, and at times she brings the fact of her personal problems directly or indirectly to the forefront when involved in an employee/supervisor situation.

These situations include such actions as career counseling, questioning of her work progression, or instructing her to perform a task. There have been several instances where supervisors who have been acting within their scope of supervision have been accused by B/C Davis of meddling in her personal affairs, harassing her, picking on her, discriminating against her based on race, etc.. She has on numerous occasions threatened to file an E.E.O.C. complaint, or ask for assistance from the N.A.A.C.P., even when the incident involved a black supervisor.

I feel that an evaluation is necessary to determine if B/C Davis is emotional or mentally fit to continue to perform her duties as a Booking Clerk prior to her return from her present suspension.

TLC/jw

xc:File

==========

January 7, 1998
Bartow

TO: Major Jeffrey Tebo, Staff Services Division

FROM: Major Willie E. Hall
SUBJECT: Request Fitness for Duty Evaluation

I am requesting that Ms. Sheila Davis, member #3787, receive a Fitness for Duty Evaluation. Ms. Davis is currently assigned as a Book-In Clerk, Records Section, Department of Detention. Several incidents have occurred involving Ms. Davis. Ms. Davis was immediately relieved of her normal duties. Ms. Davis has been assigned to "Relieved Off-Duty" status and shall be administrative (non-disciplinary) with no loss of pay or benefits. I feel an evaluation is necessary to determine if Ms. Davis is emotional or

mentally fit to perform her duties as a Booking Clerk prior to her return.

Please see attached memorandum and incident reports involving Ms. Davis.

If you have any questions, please feel free to contact me at extension 6310.

WEH: jw

xc: File

attachments

POLK COUNTY SHERIF'S OFFICE
ADMINISTRATIVE INVESTIGATION
NOTICE

TO: Sheila Davis, Member #3787

FROM: Administrative Investigations

SUBJECT: Formal Administrative Complaint

DATE: January 7, 1998

Pursuant to the Florida Police Officers' Bill of Rights, you are hereby notified of an Administrative investigation that is being

conducted in which your actions are under investigation for possible violation of General Orders.

Inspector Gloria Blackwelder will be conducting a formal Administrative investigation specifically and narrowly relating to this complaint.

The nature of the complaint is as follows:

Misconduct
Complainant: Troy Sanders
Complaint: That you used your position with the Sheriff's Office to obtain privileged information about inmates which you released to
your husband.

The investigation will consist of interviewers with witnesses, victims, and other persons with information relevant to the allegation. Upon completion of those interviews you will be scheduled for an interview at which time your statement will be taken. (The only exception to this would be when extenuating circumstances dictate that an interview be conducted immediately.) You will be provided sufficient advance notice as to the date and time for your interview. You may review the complaint and all written statements made by the complainant and witnesses immediately prior to beginning the investigative interview.

During your interview, you will be allowed to have a representative or counsel present with you per the Florida Police Officers' Bill of Rights. Between now and your interview, you should decide if you want someone with you, and arrange to have that individual present during your interview. It will be your responsibility to have them present at the scheduled time.

You are ordered to not discuss this investigation, your testimony, or any other testimony or evidence you may have reviewed until such time as the case is concluded. However, you may review the case and discuss your testimony with counsel prior to your interview.

I have been provided with a copy of the Florida Statute 112.532, known as the Police Officers' Bill of Rights.

Member **Date/Time**

s/Gloria Blackwelder **1-7-98 / 1500hrs**

Inspector in Charge of Investigation **Date/Time**

If you have any questions in this regard, please contact this Inspector at 519-3733.

Xc: Master File

Attachment 1

9800005

January 8, 1998 Records Section

TO: Major Willie E. Hall

FROM: Lieutenant Tom Cockroft

SUBJECT: B/C Sheila Davis, Member #3787
ref: Recommendation for Disciplinary Action

On the evening of January 4, 1997, approximately 2130 hours, I received an telephone call at home from Sergeant Kevin Marshall. Sergeant Marshall was assigned as the Booking Unit Supervisor for Central Booking at the time. The purpose of Sergeant Marshall's
call was to inform me that an incident had occurred with B/C Sheila Davis, and that he felt it may be necessary for her to be relieved of duty. Based on his verbal replay of the incident, I advised him to suspend her for insubordination and send her home. Written reports were generated by the following individuals concerning the incident. Sergeant Kevin Marshall #3036, Sergeant Robbie Coulter #2344, D/D Benny Hawley #2940, B/C Mary Winfield #3878, and B/C Sheila Davis #3787.

On a reviewing the submitted reports, I am lead to believe that B/C Davis was insubordinate in that she questioned Sergeant Marshall's authority, showed disrespect for Sergeant Marshall's rank and his capacity as her immediate supervisor. I am also lead to believe that

B/C Davis failed to promptly comply with Sergeant Marshall's order or instruction to assume the post at Sallyport control, by being argumentative and disrespectful. I recommend that the following disciplinary action be taken. For violation of G.O.26.1,E., 8.,a. Respect towards supervisors, eight (8) hours suspension without pay.
For violation of G.O. 26.1E., 8.,d. Compliance and Execution of Lawful Orders, forty (40) hours suspension without pay.

If I can be of any further assistance in this matter, please advise.

TLC/jw

xc: File

January 9, 1998 **Records Section**

TO: **B/C Sheila Davis, Member #3787**

FROM: **Lieutenant Tom Cockroft s/**
SUBJECT: **Fitness for Duty Evaluation**

The purpose of this memorandum is to advise you that pursuant to G.O. 22.2 Conditions of Work, you have been assigned to "Relieved Off-Duty" status. This status is administrative with no loss of pay or benefits. Pursuant to G.O. 22.2 Conditions of Work, a recommendation for a Fitness for Duty Evaluation has been submitted and approved.

An evaluation has been scheduled and you are instructed to attend. Attached is a memorandum from the Benefits Office.

Evaluator: Dr. Cynthia McDaniel Telephone: (941) 297-5463

Location: 400 Ave. K, SE, Suite 3
Winter Haven

Time: 10:00 a.m.

You must report to the Benefits Office prior to this appointment to sign the necessary waiver. Failure to comply with these instructions may result in disciplinary action.

TLC/jw

xc: Human Resources
File

RECEIVED
JAN 1 6 1998
DEPT. OF DETENTION

Department of Law Enforcement
West Division

January 14, 1998 **Southwest District**

TO: Major Wayne Cross s/

FROM: Captain Ray Church s/ 11498

SUBJECT: Attached Documents

Attached please find documents relative to a criminal investigation we conducted regarding Sheila Davis member 3787, a Jail Book-In Clerk.

We are unable to substantiate that the member committed a crime as it relates to this incident.

Administrative Investigations has been notified that we completed the criminal investigation.

RC:ds

C: File

Kevin M. Kindelan, Ph.D.
AND ASSOCIATES
PSYCHOLOGICAL & COUNSELING SERVICES

January 20, 1998

Ms. Bobra Kirkover
Polk County Sheriff's Office
455 N. Broadway Avenue
Bartow, FL 33830

RE: Sheila Davis
SSN: XXX-XX-XXXX
DOB: 10/14/70

Dear Ms. Kirkover,

I am writing to report on my consultation with Ms. Sheila Davis, a 27-year-old booking clerk you referred to me for a fitness for duty evaluation. I met with Ms. Davis for this purpose on January 16, 1998. She came alone and approximately half an hour early for the appointment. She understood the nature of the appointment and the limits to confidentiality.

Ms. Davis, who reportedly has been a booking clerk for three years, noted that she was relieved of duty on January 8, 1998 after experiencing significant stress related to her marital situation. She noted that she filed for divorce from her husband of one year in November 1997. Since that time, her husband reportedly has been vengeful and tried to prevent the divorce. On January 1, 1998, he reportedly beat her with his fist on her face and head, resulting in injury. He also reportedly threatened her with a gun in the presence of her brother and her infant nephew during that incident.

Ms. Davis noted that her husband has a history of selling and using drugs. She described him as a "street hustler" and an "outlaw." He reportedly is currently on probation, which Ms. Davis indicated has been revoked. She noted that there is currently a warrant for his arrest. He also reportedly has been physically and emotionally abusive numerous times throughout the on-year marriage. Ms. Davis noted that they separated once previously but reconciled after her husband expressed remorse and a desire to make the relationship work.

While Ms. Davis acknowledged experiencing significant stress related to this situation, she noted that she does not feel it impairs her ability to perform her job. She did express some concern about being the subject of rumors among her co-workers.

Sheila Davis
January 20, 1998
Page 2

Ms. Davis is currently living in Bradley, Florida, with her mother. She has not sought a restraining order against her husband because she expects him to be arrested soon, but she is acutely aware of the potential danger he presents for her.

She noted that she has talked by telephone with counselors at shelters for victims of domestic violence, which reportedly has been somewhat helpful for her. She has never sought face-to-face counseling for this problem or any other.

Ms. Davis presented for the interview as an attractive, casually but neatly dressed, and well groomed woman who appeared her stated age. She was open, responsive, and fully cooperative at all times. She impressed me as a pleasant and personable individual

While her mood and affect were generally within normal limits. I noted that she exhibited nervous laughter at times when discussing the situation with her husband. She also complained of an occasional "tightening" sensation in her chest, which she believes is associated with the stress she has been feeling. She noted that the sensation dissipates with rest and relaxation. She denied other significant symptoms of depression, anxiety, or other emotional

distress. She denied any history of suicidal ideation or homicidal ideation

She was alert, attentive, and fully oriented. Her reality testing appeared intact. Her receptive and expressive language skills were within normal limits. No difficulties with respect to memory or attentional skills were observed. Ms. Davis's activity level was within normal limits, although she was mildly restless.

She denied use of alcohol, illicit drugs, or tobacco.

Ms. Davis was administered the Minnesota Multiphasic Personality Inventory-2.

Her responses yielded a valid profile which indicated that she attempted to follow instructions and read the items carefully. The responses appear to be realistically truthful and are likely to reflect her current status. The clinical profile was within normal limits and is associated with individuals whose personalities are without significant pathology.

Based on the results of this evaluation, I believe Ms. Davis is fit to return to duty. Her presentation, report, and test results did not reflect significant problems which would be likely to impair her ability to perform her job.

Nonetheless, because Ms. Davis is experiencing situational stress related to her current marital difficulties which include being the victim of domestic violence, she may wish to seek counseling with a

therapist trained in working with abused women. My expectation is that such therapy would be beneficial for Ms. Davis at least until her divorce is final and the situation with her husband is sufficiently resolved.

Sheila Davis
January 20, 1998
Page 3

Working with Ms. Davis was a pleasure. Please do not hesitate to contact me if you have further questions.

Sincerely,

s/Cynthia McDanal

Cynthia S. McDanal, Ph.D.
Licensed Psychologist

CSM/wkp

February 4, 1998 **Administrative Bureau**

TO: **Major W.E. Hall**
Support Division Commander

FROM: Captain J.G. Watson s/
Administrative Bureau Commander

SUBJECT: Disciplinary Recommendation of BC Sheila Davis, 3787

I have carefully reviewed the above captioned memorandum and reports and recommend the following:

I concur with Lt. Cockroft's recommendation of an eight (8) hour suspension without pay. This is the maximum allowable under the
general order.

The Lieutenant has requested a forty (40) hour suspension without pay. The maximum allowable suspension is one-hundred sixty (160) hours. Because of the nature of the incident and the history of problems with Mrs. Davis, I am going to concur with his recommendations. It is noted that the recommendation is only a
quarter (25%) of the maximum allowable. It is also noted the BC Davis did obey the sergeant's order after her comments and "break." I feel that this recommendation may be a little more severe due to the low maximum for the first offense.

JGW/jl

xc: File

TO: Major Dale C. Tray - Department of Detention

FROM: Inspector H.R. Eggleston - Administrative Investigations Section

SUBJECT: Department of Detention - Review of Protective Action

INMATE: Gilliard, James Book-in #98-00152

MEMBER(S): D/D Sanders, 3546

Date of Incident: 1-03-98 **Time of Incident:** 1520 **Location:** BI
J/V: No
Day of Incident: Sat. **Level:** 5 **Fight:** No
B/C: No
Officer Injury: No **Inmate Injury:** No **Type of Action:**
4
M/F: M

In accordance with Detention Department Directive #94-11-012, a review of the protective action used to control the above named

inmate was conducted.

The review was completed by personal interview and/or assessment of official reports submitted by the officers involved in the actual protective action.

Due to the inconsistencies in the reports between the officers involved, and witness, Book-in Clerk Shelia Davis, member #3787, I conducted a sworn, taped interview with B/C Davis. Davis stated the following:

Davis stated that she was seated in the sally port tower at the time of the incident. Davis conceded that she could not hear the exchange between DD Sanders and the Gilliards throughout most of the incident. When asked specifically, if she could hear either the orders being issued by DD Sanders or the threats and remarks made by the Gilliards, Davis stated that she could not.

Davis said DD Sanders was alone in the receiving area with the two inmates, Mr. And Mrs. Gilliard. Mrs. Gilliard was upset and crying. Davis said it was when the door opened, and Sanders was moving Ms. Gilliard to the booking area, that she saw Mr. Gilliard get up from the bench, and heard Mr. Gilliard tell DD Sanders "you don't have to do her like that."

Davis said she was unfamiliar with the Sheriff's Office General

Orders governing the use of Protective Action, the Use of Force Continuum or the levels of force.

The above named inmate was examined by detention medical personnel. The following injuries were noted: See attached Nursing Encounter Form. ** (For Chemical Only) The inmate was given the opportunity to wash the affected area.

This review indicates that the force used during this protective action was not excessive, and was used only to the degree necessary to control the above-named inmate and prevent injury to the inmate and officer(s) alike.

Report of review written and submitted for approval.

Respectfully,

S/H.R. Eggleston

Inspector H. R. Eggleston
ADMINISTRATIVE INVESTIGATIONS SECTION

xc: Major Willie Hall
Inmates File
File

App. 37

March 24, 1998 Administrative Bureau

TO: Major W.E. Hall
Support Division Commander

FROM: Captain Joseph G. Watson s/JGW
Administrative Bureau Commander

SUBJECT: Administrative Investigation #97-064

I have carefully reviewed the above administrative investigation and recommend the following:

Ms. Davis was administered a polygraph examination in conjunction with a misconduct complaint. The results indicated deception. In an attempt to shift suspicion away from herself she indicated that BC Quartashia Tucker had supplied information to Mr. Curtis Young. Ms. Tucker denied this, submitted to a polygraph examination, and the results showed no deception on her part. Therefore, my finding is that Ms. Davis is guilty of a violation not based on the original complaint, id est Untruthfulness.

BC Davis has demonstrated a long standing pattern of behavior adverse to the efficient and effective functioning of the Detention Records Section, of which this untruthfulness and making of false
allegations are only one example.

BC Davis married Mr. Curtis Young whom she knew to have active criminal warrants for his arrest. In fact, they left Polk County to have the marriage performed because they were afraid that the criminal warrant would be detected at the time of the marriage and Mr. Young subsequently arrested.

During the first case on a series of charges under case number CF96-015150A-XX, I had to call Ms. Davis on the phone and order her to talk to the State's Attorney's Office. Her lack of co-operation

Page Two

eventually resulted in the charges being "Nolle Prosequi."

Due to Mr. Young's violent behavior and obvious abuse of Ms. Davis, several supervisors and co-workers have tried to express concern for her personal safety and well-being. She sees this as "people messing in (her) business." She has been rude and disrespectful to a number of her supervisors and co-workers who were trying to help her. On three occasions, I have requested a psychological evaluation rather than seeking a punitive remedy because I attributed her behavior to domestic violence related stress. The first two requests were not acted upon. The third request resulted in an examination which indicated that there was no psychological problem; therefore, I am forced to the conclusion that her behavior is not a result of stress related factors and that she consciously commits these acts.

In the most recent incidents involving Mr. Young, Ms. Davis indicated that she talks with him and meets him on a regular basis

despite his most recent attacks on her. She indicated that she has begun to try to c o-operate with law enforcement authorities to attempt to affect an arrest but it is unable to do so because he keeps her on a cell phone for *long periods of time while driving* around Polk and Hillsborough Counties. BC Davis does not explain why she continues to take his calls and meet him.

It is my finding that this is a violation not based on the original complaint id est Association with Criminals.

_____ The maximum of an eight working hours' suspension is recommended.

Based solely upon the results of Ms. Davis polygraph examination, I feel that she is guilty of this general order. This charge is sustained.

This is the only stated action for a violation of this general order.

It is my sincere belief that Ms. Davis' employment with the Polk County Sheriff's Office should be terminated. She has made comments about "popping a cap" (shooting someone) on citizens at the Jail's service window because she didn't like their attitude toward her. She has been insolent toward her supervisors and verbally combative with her co-workers. She does not feel that her behavior or attitude has been in any way abnormal and feels that she is a victim of a racial and religious conspiracy. I am not trained in the medical field, but I still feel that she needs psychological counseling and care; however, I have no choice but to follow the results of her examination that there is no psychological problem. In

light of that, I cannot but recommend termination of employment. Booking personnel have described her to me as "a time bomb waiting to explode." I fear that if

allowed to continue working without treatment, she may become violent and dangerous while at work.

JGW/jl

xc: File

Administrative Investigations Section

April 22, 1998
Bartow

TO: Undersheriff Paul F. Alley

FROM: Lieutenant SusanGoreck

Subject: Book-In Clerk Sheila Davis

On April 22, 1998, at approx. 1000 hrs., I requested that Lt. Cockroft bring Book-In Clerk Sheila Davis to my office so I could tell Ms. Davis to cease calling the Pinellas County Sheriff's Office in regard to her ex-husband. According to supervisory personnel there, Ms.

Davis has called them multiple times about her ex-husband possibly being in their jail under an alias. In each telephone call she identified herself as an employee of our Sheriff's Office, but did not always give her name. She also in at least one instance talked to them about her open administrative investigation and made a comment about Inspector Blackwelder.

I explained to Ms. Davis that I was not here today to ask her any questions about her telephone calls to Pinellas County, but rather to instruct her to cease all calls to them. The information she gave Inspector Blackwelder a few days ago was being handled by her, and any further information she has about her ex-husband could be handled by Inspector Blackwelder or the criminal investigator from our agency. I also instructed her not to talk to anyone about the open administrative case.

Ms. Davis was argumentative and kept asking "what about Sheila?' "Who's going to listen to Sheila? I permitted her to talk for a few minutes, but since her statements were in conflict with what we had been told by Pinellas County, I told her that it would all be looked into, and that we were only here today to make sure she understood not to call Pinellas County S.O. again.

She then became argumentative again and I had to raise my voice in an attempt to get her to stop talking. I said her name twice, with no effect, then I stated "Be Quiet". As she started to leave our office, still mumbling under her breath, she stopped at the exit door asking "who do I talk to over you about this?" I immediately called Lt. Cockroft back to the room so we could address her question. She again started arguing and when I attempted again to stop her, she said "I'm not going to be talked to like a dog" and then "Ms. Goreck, you have a problem".

Lt. Cockroft immediately told her to go back to book-in. After she left, he stated that he was returning to his office to handle this incident.

April 23, 1998 **Records Section**

TO: **Colonel Kenneth D. Barber, Commander, Department of Detention via Chain of Command**

FROM: **Lieutenant Tom Cockroft s/**

SUBJECT: **Sheila Davis, Member #3787, Booking Clerk Summary Suspension/Recommendation for Disciplinary Action ref: Insubordination**

On April 22, 1998, at approximately 0915 hours, I received a message to call Lieutenant Susan Goreck, Administrative Investigation Section. Lieutenant Goreck advised me that B/C Sheila Davis had been contacting various individuals and/or units of the Pinellas County Sheriff's Office in reference to an individual in their custody who is possibly Curtis Young, B/C Davis' husband or ex-husband. Curtis Young is the object of an ongoing criminal investigation being conducted by the Polk County Sheriff's Office, and B/C Davis is the object of an ongoing administrative investigation which are to the best of my knowledge related to some extent.

In our phone conversation, Lieutenant Goreck expressed concern that B/C Davis had contacted the Pinellas County Sheriff's Office and identified herself as being a member of the Polk County Sheriff's Office, and the phone contacts had been made while B/C Davis was on duty. In addition, it appeared that B/C Davis had relayed to the Pinellas County Sheriff's Office information concerning the existence and content of an administrative investigation in which she was involved. It was decided that Lieutenant Goreck would speak to B/C Davis with the intent of re-enforcing to her the requirement that she not speak to anyone concerning an ongoing investigation, and that she was not to represent herself as a member of the Sheriff's Office in the matter concerning Curtis Young. As her supervisor, I would be present, since it appeared that she had made the phone communications with the Pinellas County Sheriff's Office while on duty. This counseling would be conducted at the Administrative Investigation Section's Office.

The counseling began with Lieutenant Goreck identifying herself by rank and name. She stated that she was not going to ask B/C Davis any questions concerning the matter with which she was going to speak about, and that at the present time the matter had not been recorded as a complaint. Lieutenant Goreck relayed to B/C Davis the information received from the Pinellas County Sheriff's Office which indicated that she had on several occassions identified herself as a member of the Polk County Sheriff's Office, that she had revealed the existence and content of an administrative investigation and she had done so while on duty. Lieutenant Goreck reminded B/C Davis that she had

signed an affidavit stating that these matters would not be discussed with anyone. B/C Davis began making unsolicited statements in regards to her actions. These statements appeared to conflict with the information received from Pinellas County, at which time Lieutenant Goreck then stated that the matter would be looked into. I advised B/C Davis that she was not to call Pinellas County while on duty, and that she is not to identify herself as being a member of the Sheriff's Office. Should she obtain any information relating to any investigation, she was to contact the Polk County Sheriff's Office investigators.

When the counseling session ended, Lieutenant Goreck escorted B/C Davis towards the entrance to the Office as I went towards Lieutenant Goreck's Office. B/C Davis was making comments and which I could not hear from my position. Lieutenant Goreck then motioned for me to join her. As I approached, B/C Davis was talking and Lieutenant Goreck was attempting to get her to be silent and in an authoritative manner, told her to "be quiet". B/C Davis asked "why do you want me to be quiet?". Lieutenant Goreck replied, "Because I am trying to tell you something and you won't stop talking". B/C Davis stated that she didn't have to be talked to that way and said, "Ms. Goreck, you have a problem". At this point, I instructed B/C Davis to return to the Office.

Being present during this incident, I can attest that Lieutenant Goreck maintained a professional and authoritative demeanor. She utilized this to maintain control of the counseling session and control of B/C Davis' behavior following the session. I believed that B/C Davis's comment towards Lieutenant Goreck was uncalled for and insubordinate. Upon returning to my office I apprized Major Hall of the situation, and that I was going to summarily suspend B/C Davis

for Insubordination. Major Hall spoke with B/C Davis and advised her of the suspension with pay pending further action and notification.

I believe B/C Davis was insubordinate in violation of G.O. 26.1, E., 8., a.: Respect Towards Supervisors. Due to the fact this is a repeated offense within the past year, I recommend that B/C Sheila Davis be suspended without pay for a period of twenty-four (24) working hours.

/tlc

xc: Major Hall
Captain Watson
File

POLK COUNTY SHERIFF'S OFFICE

GRIEVANCE REVIEW REQUEST

AGGRIEVED
NAME s/Sheila O. Davis DATE 4/22/98 DIV/SECT/UNIT Records/Book-IN

NAME Inspector Gloria Blackwelder DATE 4/22/98 DIV/SECT/UNIT A.I.

ALLEGATION/SPECIFIC WRONGFUL ACT: I, Shelia Davis, notified I/Blackwelder from my home phone on 4-20-98 probably

around 10 A.M. that on 4-17-98, I was informed by someone that knows my ex-husband (Curtis Young JR.) that Curtis was arrested and in in Pinellas Co. Jail under an Alias name. Also, I informed
I/Blackwelder that on 4-19-98 Around 7:45 P.M. A Clearwater payphone number appeared on my call waiting I.D. And that Lt. Jacobs of Pinellas Co. Jail has verified the number to definitely be one of their Jail facility payphone Numbers. I/Blackwelder requested me to stay home by the phone, and in case she needed more information, she would give me a call, but she never called me.

CAUSE OF GRIEVANCE/HARM DONE:
I/Blackwelder falsely led Lt. Susan goreck and Lt. Tommy Cockroft to believe that I used conpany's time to call Pinellas Co. Jail when she knew that I was at home waiting in case she called me back (I do recall I/Blackwelder asking me was I home or at work and I told her I was home) However, on 4-22-98 her misleading information caused me to be susp w/pay
Furthermore, I feel indirectly belittled And discriminated against.

REMEDY OR ADJUSTMENT SOUGHT: In accordance to Grievance Procedures G.O.25.1D. Procedure: 2.d. and Harassment in the workplace G.O.25.2D Procedure: 1.a.
I feel that fair disciplinary action should be sought and a letter of apology should be written to me and no more harassment or discrimination to remedy this matter.

REVIEWED BY: RECEIVED:
GRIEVANCE

RESOLVED

DATE TIME YES NO

UNIT SUPERVISOR

SECTION SUPERVISOR

DIVISION COMMANDER

DEPARTMENT COMMANDER

ACTION TAKEN:

AGGRIEVED REVIEW ACCEPTED_____ NOT ACCEPTED

s/Sheila Davis 4-27-98
MEMBER SIGNATURE DATE

PCSO FORM 176
(REV 02/94)

POLK COUNTY SHERIFF'S OFFICE

GRIEVANCE REVIEW REQUEST

AGGRIEVED
NAME s/Sheila O. Davis DATE 4/22/98 DIV/SECT/UNIT Records/Book-IN

NAME Lt. Susan Goreck DATE 4/22/98 DIV/SECT/UNIT A.I.
ALLEGATION/SPECIFIC WRONGFUL ACT: On above date, Around 9:30 A.M., Lt. Goreck accused me of using company's time to call Pinellas Co. Jail (untrue) to inform them that my ex-husband (Curtis Young Jr.) Was arrested in their facility under An Alias name. I received this info. From someone that knows Curtis, on 4-17-98 Around 11:30 P.M., by cellular phone. After 4-17-98, I was off from work for 3 days, I pursued calling Pinellas Co. Jail from my

cell phone And home phone to verify if he was Actually their, so I could notify Polk Co. Crimestoppers, because Curtis is one of Polkk County's most wanted.

CAUSE OF GRIEVANCE/HARM DONE: Lt. Goreck requested that I do not respond to her
Lt. Goreck's hostile behavior was very discriminative and she told me not to ever call back to Pinellas Co. Jail. Also, her hostility caused me to feel pressured And belittled. Lt. Goreck caused me to be susp.w/pay?? She also stated that I was wrong for calling Pinellas Co. Jail.

REMEDY OR ADJUSTMENT SOUGHT: In Accordance to Grievance Procedures G.O.25.1D. Procedure: 2.d. and Harassment in the workplace G.O.25.2D Procedure: 1.a.
I feel that fair disciplinary action should be sought or a letter of apology should be written to me and no more harassment or discrimination to remedy this matter.

REVIEWED BY: ___ **RECEIVED:**
GRIEVANCE

RESOLVED

DATE TIME YES NO

UNIT SUPERVISOR

SECTION SUPERVISOR

DIVISION COMMANDER

DEPARTMENT COMMANDER

ACTION TAKEN:

AGGRIEVED REVIEW ACCEPTED_____ NOT ACCEPTED

s/Sheila Davis 4-27-98
MEMBER SIGNATURE DATE

PCSO FORM 176
(REV 02/94)

POLK COUNTY SHERIFF'S OFFICE

GRIEVANCE REVIEW REQUEST

AGGRIEVED
NAME s/Sheila O. Davis DATE 4/22/98 DIV/SECT/UNIT Records/Book-IN

NAME Lt. Tommy Cockroft DATE 4/22/98 DIV/SECT/UNIT Records

Commander

ALLEGATION/SPECIFIC WRONGFUL ACT: On above date, ArouNd 9:30 A.M..,Lt. Cockroft Accused me of using company's time And represent myself as a member of PCSO because I'm not a sheriff;s office member and I don't act like a sheriff's office member. I politely asked Lt. Cockroft, How Am I acting....like a criminal? Lt. Cockroft remained unresponsive. Lt. Cockroft directly and indirectly belittled me and I feel harassed and discriminated against.
Lt. Cockroft caused me to be susp. w/pay. ????

REMEDY OR ADJUSTMENT SOUGHT: In Accordance to Grievance Procedures G.O.25.1D. Procedure: 2.d. and Harassment

in the workplace G.O.25.2D Procedure: 1.a I feel that fair disciplinary action should be sought and a letter of apology should be written to me and no more harassment or discrimination to remedy this matter.

REVIEWED BY: RECEIVED:
GRIEVANCE

RESOLVED

DATE TIME YES NO

UNIT SUPERVISOR

SECTION SUPERVISOR

DIVISION COMMANDER

DEPARTMENT COMMANDER

ACTION TAKEN:

AGGRIEVED REVIEW ACCEPTED_____ NOT ACCEPTED

s/Sheila Davis 4-27-98
MEMBER SIGNATURE DATE

PCSO FORM 176
(REV 02/94)

s/Grievance Review Request

Aggrieved NAME: Shelia O. Davis
DatE: 4/22/98
DIV/Sect/uNit : RecoRds /Book-iN

NAME: Lt. Goreck - Administrative Investigations
NAMe: Inspector Gloria Blackwelder-Administrative Investigations
Name: Lt. Cockroft - Records Commander

Please note: I, Shelia Davis, was only trying to make sure that Curtis Young Jr. (my ex-husband) be revealed so that he can be extradited back to Polk Co. Also, I believe that the person that informed me of his arrest called me so I can feel safe again, due to the fact that Curtis has been violent towards me. Also, I was trying to be helpful toward the agency (PCSO), because Curtis is one of Polk County's most wanted.

However, to conclude. . . I was greatly appreciated by the Polk Co. Crimestopper Coordinator and she will be rewarding me with a check in May 1998.
. . . . I apologized to Lt. Goreck and Lt. Cockroft several times, if they felt I had done wrong, but they would not accept.

s/Shelia Davis 4-27-98

April 27, 1998 **Bartow**

TO: **Undersheriff Paul F. Alley**

FROM: **Lietenant Susan Goreck**

SUBJECT: **Book-in Clerk Sheila Davis**

On April 22, 1998, at approx. 1000 hrs., I gave Book-in Clerk Sheila Davis a direct order to cease all telephone calls to Pinellas County Sheriff's Office. (Following the meeting, Ms. Davis was placed on paid administration leave by her supervisors for insubordination.)

Ms. Davis was ordered to cease calling Pinellas County because she was interfering with our attempt to assist their agency in identifying one of their inmates booked under a false name. (The inmate was Ms. Davis' ex-husband). Ms. Davis had given Inspector Blackwelder the original information and she was told that Inspector Blackwelder would get started handling it. She was also told by at least two supervisors at the Pinellas County Sheriff's Office that they would not discuss the case with her and she was instructed by one of the supervisors to go through our Intelligence Section and the other supervisor told her he would go through Inspector Blackwelder. The calls placed to Lt. Jacobs and Sgt. Pikramenos on 21 April 1998 by Ms. Davis appear to have been made while she was at work at approx. 1430 hrs.

Ms. Davis has not advised us of this, but it appears from the phone

message that she left for Sgt. Pikramenos on 22 April 1998, that she may be attempting to collect the Crime Stoppers reward for her information about her ex-husband. Even if this is correct, it does not negate her responsibility as a Polk County Sheriff's Office member to follow a direct order.

On April 24, 1998, we were provided with a copy of a tape from Pinellas County Sheriff's Office by Sgt. John Pikramenos. The tape reflects that Sheila Davis called his office on April 22, 1998, at approx. 1741 hrs. to leave him a telephone number where he could call her back. (See attached transcription_.

Her telephone call, placed after she was ordered to cease all calls to Pinellas County Sheriff's Office is a direct violation of G.O. 26.1 (E)(8)(D), Compliance and Execution of Lawful Orders and it is my recommendation that she be dealt with accordingly.

xc: Lt. Tommy Cockroft

Phone message to Sgt. John Pikramenos, 4/23/98, from Sheila Davis.

SD: Hello, Detective, this is Sheila, um, I was calling in regards to what I called about, um, Curtis Young, um, that is going by the alias Terry I. Brown at your facility, um, Crime Stoppers told me to call you it's now 5:41 P.M. um, today is Wednesday, April 22nd, um, I'm just calling, they told me to call you and inform you that I do have a Crime Stoppers code number, and um, I'm just calling that to inform you that you may
call me here at 941-428-2198, thank you.

May 22, 1998
Bartow

TO: Colonel K.D. Barber, Commander, Department of Detention

FROM: Major Willie E. Hall

SUBJECT: Administrative Investigation #97-064 - Misconduct

Sheila Davis, member #3787
Quartashia Tucker, member #4256

I have carefully reviewed the above captioned Administrative Investigation and recommend the following:

According to the information contained in this investigation and a review of Chapter 119 F.S., I am led to believe that the releasing of inmate information such as sex, age, address and social security number does not constitute communicating criminal information.
Therefore, this allegation is .

No action be taken against Booking Clerk Sheila Davis, member #3787, on this charge.

Currently all of the Records Section members have attended a

mandatory class on Chapter 119 F.S.

It is evident from information contained in this investigation and Booking Clerk Sheila Davis', member #3787, own admission that she knew about her ex-husband's criminal background when she married him in February 1997. B/C Davis' ex-husband was sentenced to prison during the time they were dating and he had pending felony charges when they married. B/C Davis was the victim of some of these charges including Armed Kidnaping, Aggravated Assault and Battery. These charges were nolle prossed nine days after their marriage, due to the fact that B/C Davis did not wish to prosecute and because she had married the perpetrator.
Therefore, this allegation is .

Eight (8) hour suspension without pay.

Colonel K.D. Barber
May 22, 1998
Page Two

This investigation discloses insufficient evidence to clearly prove or disprove this allegation.
Therefore, this allegation .

No action to be taken against Booking Clerk

Sheila Davis is this charge.

According to the information contained in this investigation and a review of Chapter 119 F.S., I am led to believe that the releasing of inmate information such as sex, age, address, and social security number does not constitute communicating criminal information.
Therefore, this allegation

No action to be taken against Booking Clerk Quartashia Tucker, member #4256, on this charge.

Currently all of the Records Section members have attended a mandatory class on Chapter 119 F.S.

WEH:jw

xc:File

May 27, 1998
Bartow

TO: **Booking Clerk Sheila Davis, member 33787**

FROM: **Colonel K. D. Barber**

SUBJECT: **Termination of Employment**

This is official notification of your dismissal from employment with the Polk County Sheriff's Office effective May 29, 1998.

Your dismissal is the result of the following findings:

Respect Toward Superiors-Violation of G.O.26.1.E.,8.,e.

It is evident from the reports that your were disrespectful toward Sergeant Kevin Marshall. You raised your voice and made statements such as "why do you keep messing with me', "you're picking on me", "you're tripping", "you ain't nothing to me and them stripes don't mean nothing either".
Therefore, this charge is sustained.

Respect Toward Superiors - Violation of G.O.26.1.E.,8.,a.

It is likewise evident from the reports that you were disrespectful to Sergeant Kevin Marshall when he told you that you were being sent home for the remainder of the shift. You again raised your voice

**and continued to interrupt Sergeant Marshall.
Therefore this charge is sustained.**

Abusiveness - Violation of G.O.26.1.E.,8.,B.,2.

**This general order states: Agency members shall not use threatening language or gestures toward any agency member. You stated to Sergeant Kevin Marshall that he was going to pay for this, when you were told by him that you were being sent home for the remainder of the shift. This conversation was witnessed by Sergeant Robbie Coulter.
Therefore, this charge is sustained.**

Compliance and Execution of Lawful Orders - Violation of G.O.26.1.E.,8.,d

**This general order states: Agency members shall promptly comply with and execute direct orders or instruction given by a supervisor or superior officer, and shall not refuse to comply or execute such orders or instructions when the orders or instructions are lawful and proper. According to the information contained in the reports, you failed to promptly comply with the direct orders given by Sergeant Marshall when you were told to relieve D/D Benny Hawley in the Control Tower.
Therefore, this charge is sustained.**

Compliance and Execution of Lawful Orders - Violation of G.O.26.1.E.,8.,d.

Based on the reports and a pre-disciplinary hearing with you, it became evident that you refused to comply with a lawful order given to by Lieutenant Susan Goreck. You were ordered to cease calling the Pinellas County Sheriff's Office because you were interfering

with our agency's attempt to assist Pinellas County in identifying one of their inmates booked under a false name. You stated during your pre-disciplinary hearing that you called Pinellas County Jail because you wanted to make sure that Curtis Young, your ex-husband, was in fact in jail. You also stated that it was at the request of Crime Stoppers. You stated that you made it known that you were a Booking Clerk and that you did not represent yourself as a Deputy.
Therefore, this charge is sustained.

<u>Respect Toward Superiors - Violation of G.O.26.1E.,a.</u>

It is evident from the reports that you were disrespectful toward Lieutenant Susan Goreck. During your pre-disciplinary hearing, you stated that you were not arguing but trying to make your point.
Therefore, this charge is sustained.

You are entitled to appeal your dismissal to the Civil Service Board in accordance with General Order 22.9(e)(7)(d)(1)(b).

If you have Polk County Sheriff's Office health insurance coverage, you will receive a notice by mail within 15 days from CobraServ National Service Center, PO Box9073, Clearwater, Fl 34618-9073, (800)488-8757 regarding extension of this coverage.

Questions regarding your retirement benefits should be directed to the Division of Retirement, 2639 North Monroe Street, Tallahassee, Fl 32399-1560, (904) 488-6491.

Questions regarding any other Polk County Sheriff's Office benefits may be directed to the Benefits Office at (941) 534-6335.

A copy of this letter and other documentation relating to your dismissal will be made a part of your personnel file.

Acknowledgment of receipt of the original copy of this document.

s/Shelia Davis
Signature of Dismissed Member

29 may 98
Date

s/ Willie E Hall
Witness

KDB:jw

xc: Major Hall
Administrative Investigations
Personnel File
File

Inmate Name: TUCKER, QUARTASHIA CHANESE
01/14/2004
Booking Number: 2004-001107 Booking Date: 01/14/2004
Race: B Sex: F DOB: 08/18/1978 Height: 504 Weight: 140

Location:
Arresting Agency: POLK COUNTY SHERIFF
Hold: N Hold for:
Disposition of Hold:

Charge Number: 1
Statute: 817.034 (4A3) FRAUD-SWINDLE-OBTAIN PROPERTY UNDER 20K DOLS
Charge on arrest docket: SCHEME TO DEFRAUD INFO FILED
Bond Type: SBN Bond Number: AA03351846
Purge Number: Purge/Bond Amount: 1,000.00
How Released: SURETY BONDED
Upgrade/Reduction:

Jail Photo

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Published Friday, September 8, 2006
Friday, September 8, 2006

By RICK ROUSOS

BARTOW–A valued Polk County Jail captain described as a survivalist has been accused of stealing ammunition from the Sheriff's Office and stockpiling enough explosive material to build some sort of a bomb.

The bizarre allegations against Capt. Mark DeComo, 44, includes sheriff's investigators saying he had a German war shirt replete with a swastika and a copy of "The Turner Diaries," a fictional work about a white supremacist army fueling an Aryan revolution in America.

The shirt and book aren't illegal, Sheriff's Chief Gary Hester said, "but they are disturbing."

DeComo was charged with tampering with evidence, petty theft, possession of a destructive device and culpable negligence for

endangering others. He was booked into and out of the Polk County Jail on $2,750 bail early Friday – where he had worked for just a few months shy of 25 years.

DeComo resigned after his release from jail.

Two of the charges – evidence tampering and possession of a destructive device – are felonies.

The theft charge, for now, is a misdemeanor because, Judd said, investigators are still trying to determine what of DeComo's arsenal was stolen from the Sheriff's Office and what wasn't. The culpable negligence charge is also a misdemeanor.

Judd, who met with the media Friday afternoon, said the Sheriff's Office was tipped to DeComo's behavior in late July.

DeComo's wife was interviewed by detectives Thursday and telephoned DeComo, who was at work, immediately afterward, Judd said. He said DeComo left work and began frantically removing ammunition from his home to relatives' homes across the street and in Bartow.

Judd said DeComo had .45- caliber magazines and several thousand rounds of .45-caliber, .22-caliber and 5.56 caliber ammunition. He said DeComo had the material to build explosive devices, including chemicals, gunpower, strikers with primer and grenade shells.

Sheriff's supervisors said DeComo is suspected of stealing flashlights, pillows, soap, toothpaste and MRE'S – meals ready to eat – from hurricane supplies.

Investigators said DeComo also stole quantities of carpeting from

the Sheriff's Office, the kind that comes in squares.

Judd said DeComo denied stealing anything. DeComo, who has an unlisted telephone, did not answer knocks at the door to his home south of Lakeland on Friday afternoon. However, the carpeting on the covered walkway leading to his doorway is the same as the carpeting covering the halls at the sheriff's administrative building.

DeComo was being paid $75,554 per year. His job evaluations over the years have been very good.

Sheriff's supervisors say they think the thefts took place over the last few years. "We had no idea" Judd said. "We were shocked."

DeComo joined the Sheriff's at age 19, but sheriff's officials said before that he served in a special forces unit of the U.S. military.

Judd said investigators have no reason, at least for now, to suspect that DeComo's arsenal was for anything but personal protection.

But, Judd said, "I don't know what was on his mind ... I thing he was preparing to survive whatever came."

"For Immediate Release"

"Allegations were made that Captain Mark DeComo, PCSO, had over a period of years, been removing items belonging to the Polk County Sheriff's Office and Converting those to personal use. Among the items were thousands of rounds of ammunition, command packs, flashlights, pillows, soap, toothpaste, and other law enforcement related items.

(Redacted) [An informant] provided ammunition to law enforcement [who] advised it was given to (Redacted) by Mark DeComo. The lot numbers on the ammunition matched lot numbers which had been shipped to and purchased by the Polk County Sheriff's Office.

When Mark DeComo learned of the investigation, he was under surveillance by members of the PCSO Bureau of Special Investigation. He was observed to go to his house and removed a large number of items and transfer them to a neighbor's house and another house in Bartow. Those houses were later learned to belong to sister-in-law and (DeComo's) mother-in-law.

Items were subsequently recovered from those residences. The items included several thousand rounds of ammunition, command packs, distraction devices, chemical agents, a large quantity of carpet squares, and items which when combined could produce an explosive device, to include gunpowder, strikers with primer, and grenade bodies. The items which could produce the explosive device were left in the residence of his sister-in-law, who was unaware of the dangerous contents.

In interview, Mark DeComo advised all items in his possession were either purchased by him or were given to him, including the ammunition and carpet. Due to his years of experience with the

PCSO and due to his position as a Captain in the agency, he either knew or should have known that the individuals he said gave him the items had no authority to give away Sheriff's Office property."

A Six-Star Accredited Law Enforcement Agency

September 8th, 2006 Lakeland, Fla.

TO: Sheriff's Grady Judd
Via Chain of Command

FROM: Captain Mark J. DeComo

SUBJECT: Letter of Resignation/Retirement

This letter is submitted to announce my resignation/retirement from the Polk County Sheriff's Office. I respectfully request that my two week notice be waived given my tenure of twenty-four years and ten months of service. This action will allow me to start the next chapter in my life.

Sincerely

s/Mark J. DeComo
Mark J. DeComo

X: File

s/Two week notice waived.
s/daletray

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Published Saturday, September 23, 2006
Saturday, September 23, 2006

By GABRIELLE FINLEY
The Ledger

BARTOW – Polk County Sheriff's Detention Chief Willie Hall said Friday he is retiring from the agency after 25 years of service.

Hall, 50, said he's been mulling over the idea of retirement with

close friends for a while and said it's his time to go.

"I want to turn the pressure down a little bit," said Hall, who has supervised the overcrowded Polk County jails in Bartow and Frostproof, where the maximumrisk inmates are held. "I want to focus on family.

"It's my time. It's time for some of the younger people to take over and I have a lot of faith in them."

Hall was the highest-ranking black official at the Sheriff's Office.

His last day as detention chief will be Dec. 31.

As of last year, Hall earned a salary of $97,396.

Sheriff's Maj. Steve Lester, a 20-year veteran with the department, said he will take Hall's place.

"I'm excited. I'm ready," Lester said.

Hall has been with the detention department since 2002 and supervised nearly 550 employees, laid out a plan for jail expansion, revamped the juvenile boot camp, and helped start the faith-based program for male and female inmates.

The state's boot camps' "scared straight" tactics came under scrutiny after the January death of juvenile detainee Martin Lee Anderson, 14, who was shown in a videotape being beaten by a half-dozen drill instructors in Panama City.

Polk County Sheriff Grady Judd has said the county's boot camp officials don't believe in confrontational and physical tactics.

Hall has worked to apply the STAR program (Sheriff's Training and Respect Program), which concentrates more on education and mentoring, at the Polk County juvenile boot camp.

Judd said Hall's work will help enhance the program the Sheriff's Office already had in place.

Hall also headed the project to bring an additional 2,040 beds to the South County Jail in Frostproof, where one section of he project is scheduled to be completed in 2008, Sheriff's official said.

"He's had a very good career," said Sheriff's Chief of Staff Gary Hester. "Bill's a good guy and a professional. He's made a lot of positive changes."

Hall also helped develop the faith-based program established in May 2005, where male and female inmates volunteer to receive spiritual guidance and life skills to keep them out of jail.

Hall said he is still deciding what his next move will be. Meanwhile, he plans to take a "true vacation."

Detention Major Del Tray also is retiring in December, said sheriff's spokeswoman Donna Wood.

Detention Capt. Mark DeComo was set to retire in December, but instead he was charged with tampering with evidence, petty theft, possession of a destructive device and culpable negligence for endangering others.

Sheriff's detectives found DeComo had been stealing ammunition from the Sheriff's Office and stockpiling explosive material, according to sheriff's officials.

Gabrielle Finley can be reached at or 863-802-7590.

The Polk County (Fl.) Press, May 27, 1999 Page 6

Kenneth Temples, 32, Mulberry, has filed suit against the Polk County Sheriff stemming from an incident in 1997 when he was confined to jail for two days.

Since his jailing, the Sheriff's Department has made some changes in how it deals with handicapped persons and others with physical or emotional problems.

Mr. Temples has multiple sclerosis and is suing the Sheriff under the Americans With Disabilities Act.

"It was a pretty horrifying experience," he said.

Temples lawyer, Ryan Rodems of Tampa, charged that Sheriff Crow has lost "control" over his own jail.

The lawyer listed at least seven allegations in recent times of mistreatment in the Polk County Jail system.
Included are inmates who have died in custody of the Polk County Sheriff, a guard who was charged with beating an inmate who was shackled to his bed in the head. The man died.

Another case alleged by the attorney is of a 90-pound woman who was pepper sprayed in the jail.

In another case, the son of a Mulberry business family, Kenneth Brown, died after he was beaten in the Polk County Jail. He was in for a driving under the influence charge though he didn't show anything on the breathalizer. He apparently angered a jailer when he demanded to know when he was getting out. He was beaten so badly his arm was torn from his socket.

There are other tales of horror of beating of inmates and treating some inmates as animals in the county jail, according to Citizens Law Enforcement Review. While President Doug Bark says many

law enforcement people are honest and are trying to follow the law, there are a few bad apples who have abused the rights of some people in costody or who have made exaggerated charges.

Temples charges that he, a disabled man, was put in with the general prison population.

Temples was taken in on a child support matter and claims when the sheriff's deputy came to pick him up, his wheel chair did not fit into the deputy's patrol car. He said the deputy helped him "crawl" into the car and when they arrived at the jail, he was "pulled" from the car and handcuffed to a jail wheel chair which was too heavy to use.

He charges further that instead of having a handicapped van, he was thrust up out of his wheel chair with his legs left dangling and with one deputy bear-hugging him from behind. He claims he was "dropped" down causing bruises and injuries.

He further claims he was handcaffed to the cage of a non-handicapped equipped van and thrown around and "knocked off the bench" He said he had bee handcuffed and was thrown to the floor of the van with his arm handcuffed above his head for 10 minutes. He said he received pain and injury to tonerves in his arm that lasted for four months.

In his two-day stay in the Polk County jail, he says he could not use the bathroom because because no preparations were made for handicapped, namely himself. He had to have help getting to the bathroom.

Temples' suit also claims he was denied his medications and three times was turned down by jailers when he asked to see a doctor. The lawsuit claims this stress all added to the deterioration of his medical and emotional condition.

The suit says the Sheriff violated Temples' rights because he knew the jail and was properly equipped to transport handicapped or to accomodate disabled individuals.

Some changes have been made in the Jail after this ordeal.

THE LEDGER • FRIDAY, MAY 28, 1999

An internal investigation revealed he slapped an inmate.

The Ledger

BARTOW - A correctional officer was suspended from duty without pay after an internal investigation begun in February revealed he slapped an inmate who was in shackles.

Sgt. Walter Reimer, 37, was suspended for 11.75 hours last month after slapped James Moore across the face because the inmate was "irrational," a summary of the investigation stated.

Reimer has been employed by the Polk County Jail since October 1986. His annual salary is $40,330.

The incident occurred Sept. 28 when Moore argued with two correctional officers about the quality of his mattress. When he refused to return to his cell, an officer sprayed him with a chemical spray. He then was taken to a shower to wash his face, hand-cuffed and taken to the nurse's station for treatment, the summary stated.

Corrections officers used force on Moore six times, including the Sept. 28 incident, since he was incarcerated June 11, the summary said.

At the nurse's station, Moore was taken to the floor by correctional officers after he stood up and kicked the chair he had been sitting in. Moore then was placed in shackles, the summary stated.

Correctional officer Justin MacIntosh told an investigator that Moore was "absolutely insane" when he was returned to his chair.

"He was crazy," MacIntosh told the investigator. "He's yelling, screaming, cussing, ranting, raving, bouncing up and down on the chair, uh, I mean half tearful, half, I mean he was just crazed. Crazy."

Moore continued cursing and yelling when Reimer slapped him once across the face. After being slapped, Moore calmed down, MacIntosh told the investigator.

Thomas Connors, also a correctional officer, told an investigator Moore was agitated and aggressive, but made no aggressive move toward Reimer.

During an interview, Reimer told the investigator that Moore said he "would have them all killed," the summary said

None of the other correctional officers who witnessed the incident mentioned that statement in their interviews with the investigator, according to the summary.

Reimer told the investigator he chose to slap Moore rather than use a chemical spray or a shock device, because he thought either would have aggravated the situation.

Reimer did not include the slap in his incident report because he "thought it was a minor incident, and that was a separate action," he told the investigator, adding he forgot to write the report later because "it was a busy day."

Reimer could not be reached for comment Thursday.

The Ledger
Tuesday, August 10, 1999

The Ledger

BARTOW - A Highland City man says he was handcuffed when a Polk County sheriff's deputy pulled him out of a patrol car and beat him.

Leonard Clark said he suffered a cut above his right eye during the

Feb. 9 incident.

On June 6, Clark was found guilty of driving under the influence, possession of cocaine and drug paraphernalia and resisting arrest witha nd without violence. He was sentenced to three years probation.

Clark admits he "mouthed off" to Sgt. John Callahan as he was being placed in a patrol car because the sergeant was being disrespectful" to him.

When he talked back, Clark said Callahan jerked him out of the car and slammed his head against the trunk, causing the cut.

Clark said that even though he was talking back to Callahan, after he was in hand-cuffs he no longer posed a physcial threat to deputies, and Callahan should not have physically abused him.

Deputies took pictures of Clark's facial cut and took him to Bartow Memorial Hospital to have it sutured.

But while the bites he sustained from a police dog during the arrest are documented in the deputies' reports, there isn't a word about how Clark's eyebrow was split open that night.

Callahan told investigators he instructed other officers to document the cut.

Deputy John Joiner told investigators he didn't recall those instructions.

Joiner said he thought the cut was being documented because he had been told to photograph it.

Clark, 42, has filed suit against the deputies in federal court.

He also filed an excessive force complaint with the Sheriff's Office against Callahan in March.

Callahan was exonerated after the investigation was completed recently, but he received a letter of career counseling for failing to document Clark's cut.

PLEASE SEE COMPLAINT, B2

The omission gave off"an air of impropriety," Maj. Richard Sloan stated in the counseling letter.

"This ommission only exacerbates the situation further and precariously places the agency in a posture of defending itself against un-substantiated accusations of ex-cessive force," Sloan wrote.

Callahan, a 22-year veteran of the Sheriff's Office, is paid $40,330 per year.

Clark wants Callahan to be held accountable for his actions.

"What I did was wrong, but did I deserve to be beaten? No," Clark said.